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PREFACE

About the SSA Handbook

We are committed to keeping you informed of your rights and obligations under the Social Security laws. This Social Security Handbook is one of numerous publications about the Social Security programs. It also contains brief descriptions of related programs administered by other agencies. It is a readable, easy to understand resource for the very complex Social Security programs and services. The Social Security programs are so complex it is impossible to include information about every topic. However, we have included what we believe is the most common and helpful information.

In general, this version of the Handbook includes the provisions of the Social Security Act (the Act), as amended through December 31, 2000, regulations issued under the Act, and precedential case decisions (rulings). In case of a conflict between the contents of the Handbook and the Act, Regulations, and Rulings, the latter take precedence.

Organization and use of Plain Language

This 2001 edition of the Social Security Handbook complies with the President's directive to use plain language in all written products intended for the public. We have rewritten the Handbook to make the content easier to understand by our readers. The material is now organized in question and answer format so that you can find the information you need faster and easier than before.

Do You Need More Information?

You may obtain clarification or assistance on Social Security matters at any Social Security office or by calling the Social Security toll-free telephone number, 1-800-772-1213.

If you want to purchase this Handbook and the following related publications, they are for sale at the U.S. Government Printing Office (GPO), Washington, D.C. 20402-9328. You may also review SSA publications online at www.ssa.gov.

Compilation of the Social Security Laws

This is a two-volume set published biennially, following the end of each congressional session. Volume I contains the Act, as amended and selected provisions of the Internal Revenue Code. Volume II contains the Appendixes of the Act, and provisions of public laws and statutes

cited in the Act. It also includes other provisions of the Internal Revenue Code and public laws, which affect the administration of the Social Security Act but do not amend it.

Code of Federal Regulations

This publication includes sections under Title 20, Chapter III, which cover regulations on Federal retirement, survivors, disability insurance, supplemental security income for the aged, blind, disabled, and black lung programs. Sections under Title 42, Chapter IV, cover regulations on health insurance. The Code of Federal Regulations is compiled periodically. New regulations and amendments to regulations are published in the Federal Register.

Rulings

Social Security Rulings and Acquiescence Rulings on retirement, survivors, disability insurance, supplemental security income, and black lung programs are published on a flow basis and may be purchased individually or by annual subscription.

Your Comments are Welcome!

We would appreciate hearing your views about this Handbook. Please mail your comments to:

*Social Security Administration
Office of Process and Innovation Management
2136 West Low Rise Bldg.
6401 Security Boulevard
Baltimore, Maryland 21235-6401*

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CHAPTER 1

OVERVIEW OF THE SOCIAL SECURITY SYSTEM

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INTRODUCTION

100. Purposes of Social Security.

100.1. What are the purposes of Social Security?

The Social Security Act and related laws establish a number of programs that have the following basic purposes:

- A. To provide for the material needs of individuals and families;
- B. To protect aged and disabled persons against the expenses of illnesses that may otherwise use up their savings;
- C. To keep families together; and
- D. To give children the chance to grow up healthy and secure.

100.2. What programs are included under the Social Security Act and related laws?

The following programs are included:

- A. Retirement insurance;
- B. Survivors insurance;
- C. Disability insurance;
- D. Hospital and medical insurance for the aged, the disabled, and those with end-stage renal disease;
- E. Black lung benefits;
- F. Supplemental security income;
- G. Unemployment insurance; and
- H. Public assistance and welfare services, including:
 - 1. Aid to needy families with children;
 - 2. Medical assistance;
 - 3. Maternal and child health services;
 - 4. Child support enforcement;
 - 5. Family and child welfare services;
 - 6. Food stamps; and
 - 7. Energy assistance.

100.3. What programs does the Federal Government operate?

The Federal Government operates the retirement, survivors, disability, hospital and medical insurance, black lung benefit, and the supplemental security income programs. This Handbook is primarily concerned with these programs.

100.4. What programs are operated by the States?

The States, with Federal cooperation, operate unemployment insurance, public assistance, and welfare services. They are discussed briefly in Chapter 23

101. Obtaining a Social Security card.

101.1. What is a Social Security Number?

A nine-digit Social Security Number (SSN) identifies the record of earnings an individual has in employment or self-employment covered by Social Security.

101.2. How can you obtain a Social Security Number?

To obtain an SSN, ask for Form SS-5 (*Application for a Social Security Card*) at the nearest Social Security office. You must provide evidence of your age, identity, and U.S. citizenship or alien status. Even if you are applying for another person, you still must provide evidence of your identity, and you must meet proper applicant guidelines.

101.3. Is it necessary to apply in person?

If you are 18 or older, then you must apply in person for a Social Security card. It is important for you to provide complete and correct personal information so that your earnings are credited properly and to prevent the unlawful use of your number by someone else. There are penalties for falsely obtaining or improperly using an SSN.

101.4. When is a Taxpayer Identification Number needed?

You need a Taxpayer Identification Number (TIN) if you:

- A. Have income that is reported to the Internal Revenue Service (IRS);
or
- B. You are claimed as a dependent on someone's Federal income tax return.

The IRS uses the SSN as the TIN if you have been assigned one. If you have any questions about use of the Tax Identification Numbers, contact the nearest IRS office.

101.5. Is it necessary to obtain a new Social Security card if yours is old?

Social Security cards issued after October 31, 1983, are counterfeit-resistant and tamper-resistant. They are the same size and have the same general design as the old cards, but they look very different.

You should **not** file for another Social Security card just to have the new design. The old cards are still valid.

101.6. What should you do with your Social Security card once you receive it?

As soon as you receive your Social Security card, detach the stub and put it in a safe place. The back of the stub contains important information. Put your Social Security card in a safe place to prevent loss or theft.

101.7. What should you do if you lose your Social Security card?

If you lose your Social Security card, apply for a replacement card by filling out another Form SS-5. The new card will have the same number as the one lost. You must present evidence of your identity when requesting a replacement card. If you are foreign born, you must provide evidence of your current citizenship or alien status.

101.8. How do you update information?

If you wish to correct or update information that you gave on the original application for an SSN, you must complete a new Form SS-5. Submit supporting documents that show the corrected information (e.g., your birth certificate or other evidence of your age when the date of birth originally provided is incorrect).

You must always report a change in your name for example, upon marriage. The supporting evidence must identify you by both your old and new names. If you are foreign born, you must also provide evidence of your current citizenship or alien status.

102. Checking individual earnings records.

102.1. How can you check your Social Security earnings records?

You can check your own Social Security earnings record by completing Form SSA-7004SM (*Request for Earnings and Benefit Estimate Statement*). This form is available at any Social Security office or by calling our toll-free number, 1-800-772-1213. We will mail a statement of your wages, any self-employment income credited to your earnings record, and other fitting information (see § 1419) to you.

102.2. What should you do if your earnings record is inaccurate?

If you find that your earnings have not been credited correctly, contact a Social Security office and ask us how to go about correcting your records. There are specific time limits for correcting an earnings record. (See §§ 1423-1427.)

103. Application for benefits or Medicare protection.

103.1. Where do you file claims for benefits and applications for Medicare?

You may file claims for Social Security benefits, Black Lung benefits, or Supplemental Security Income (SSI) and apply for Medicare protection in person or by telephone with any Social Security office. We provide you with the proper application and enrollment forms. If you need assistance, our employees will help you fill out the forms. In some cases, you may file an application for food stamps at Social Security offices if you are applying for or are receiving SSI. (See §2108 and §2310.)

103.2. Where do you file your claims if you live outside the United States?

If you are living in **Canada**, file your claims with the nearest border Social Security office. If you are residing in the **Philippines**, file your claims with the Veterans Affairs Regional Office in Manila. If you are living in **Taiwan**, file your claims with the American Institute in Taipei. If you are living in any **other foreign country**, file your claims at the nearest United States Foreign Service post. If you live outside the U.S. and wish to establish direct contact with us, address inquiries to: Post Office Box 17769, Baltimore, Maryland 21235-7769.

Note: Except for certain blind or disabled children, persons residing outside the 50 States, the District of Columbia, and the Northern Mariana Islands cannot be eligible for SSI.

104. Who is responsible for proving a claim?

You are responsible for submitting the necessary evidence to support a claim. We assist you by explaining the evidence that is required to establish your claim. If you are unable to collect the evidence, we offer special assistance, based upon your needs, to ensure the proper outcome of your claim. In addition, we maintain cooperative relationships with many groups and organizations that provide assistance with the application process.

105. How are claims processed by the Social Security office?

We make most decisions on the non-disability issues in claims filed. We send completed retirement and survivors insurance claims to the appropriate program service center for spot review and, in some cases, for final processing. We keep SSI claims files in our offices and later ship them to the Folder Staging Operations Center at the Wilkes-Barre Data Operations Center.

If a disability decision is involved, we forward the claim in accordance with the procedure in §116.

106. Duty to report certain events.

106.1. Who is responsible for reporting events affecting benefits?

You are responsible for reporting any event(s) that may affect your Social Security benefits. We explain this responsibility when you apply for benefits. (See §133 and Chapter 18.)

106.2. What can you do if you disagree with SSA's decision about your claim or benefits?

If you are dissatisfied with any action taken affecting your right to monthly benefits, a lump-sum death payment, or entitlement to hospital or medical insurance protection, you may appeal. Our office explains your appeal rights. We also assist you in your appeal, your request for a hearing by an administrative law judge, or your request for review by the Appeals Council. (See Chapter 20.)

107. Totalization agreements.

107.1. What are "totalization agreements"?

The Social Security Act allows the President to enter into international agreements to coordinate the U.S. social security programs with the social security programs of other countries. These agreements are known as "totalization agreements".

107.2. With what countries does that U.S. have totalization agreements?

The United States currently has Social Security agreements in effect with 17 countries - Austria (1991), Belgium (1984), Canada (1984), Germany (1979), Finland (1992), France (1988), Greece (1994), Ireland (1993), Italy, Luxembourg (1993), the Netherlands (1990), Norway (1984), Portugal (1989), Spain (1988), Sweden (1987), Switzerland (1980), and the United Kingdom (1985).

107.3. What are the purposes of totalization agreements?

Totalization agreements have two main purposes:

- A. To eliminate dual social security coverage and taxation. This situation occurs when a person from one country works in the other country and is required to pay social security taxes to both countries for the same work; and
- B. To avoid situations in which workers lose benefit rights because they have divided their careers between two countries. Under an agreement, such workers may qualify for partial U.S. or foreign benefits based on combined work credits from both countries.

108. Who is NOT covered under retirement, survivors, disability, and hospital insurance programs?

Nine out of 10 workers in the U.S. are in employment or self-employment covered by the retirement, survivors, disability, and hospital insurance programs. You are **not** covered if you are:

- A. A Federal civilian employee hired before 1984;
- B. An employee of a State or local government who is
 - 1. A member of your employer's retirement system; and
 - 2. Not covered by a voluntary Federal/State Social Security agreement.
- C. A certain agricultural and domestic worker.

ORGANIZATIONAL STRUCTURE OF THE SOCIAL SECURITY ADMINISTRATION (SSA)

109. How is the Social Security Program administered?

SSA is headed by a Commissioner. Our central office is located in Baltimore, Maryland. Our administrative offices and the computer operations are also located here. Individual claims services are provided by our local social Security offices.

110. The function of the Social Security office.

110.1. What is done at your local Social Security office?

Your local Social Security office is the place where you can:

- A. Apply for a Social Security number;
- B. Check on your earnings record;
- C. Apply for Social Security benefits, black lung benefits, SSI, and hospital insurance protection;
- D. Enroll for medical insurance;
- E. Receive assistance in applying for food stamps; and
- F. Get full information about individual and family rights and obligations under the law.

There is no charge for the services of the office staff.

110.2. How can you obtain Social Security services?

You can call our toll-free telephone number, 1-800-772-1213, to receive the services listed in (A) - (F) above. This toll-free telephone number service is available from 7 a.m. to 7 p.m. any business day. All calls are confidential.

110.3. Are there other places you can meet Social Security office staff other than the local offices?

If you live far away from the city or town in which the local office is located, our staff makes regular visits to outlying areas. We make visits to locations called contact stations. You can obtain a schedule of these visits from the nearest Social Security office. You can also telephone the nearest Social Security office or call our toll-free number, 1-800-772-1213, to obtain prompt answers to questions or to apply for benefits.

If necessary, a representative from our office will make a personal visit to your home if you are unable to visit the office because of illness or infirmity. (See §1512.)

110.4. Where can you find contact information for the nearest Social Security office?

For the telephone number or address of the nearest Social Security office, look in the telephone directory in the blue pages for Social Security Administration under “United States Government”. You can also call our toll-free number, 1-800-772-1213, for assistance.

110.5. Where are SSA's regional offices located?

We have regional offices headed by Regional Commissioners who are directly responsible for the Social Security offices located within a specified area. There are approximately 1,300 Social Security offices throughout the U.S., the U.S. Virgin Islands, Puerto Rico, Guam, and American Samoa that deal directly with the public as described throughout this Chapter. Each region also has a number of teleservice centers located primarily in metropolitan areas. These offices handle telephone inquiries and refer callers appropriately.

110.6. Where are SSA's program service centers located?

Program service centers are located in Birmingham, Alabama; Chicago, Illinois; Kansas City, Missouri; New York, New York; Philadelphia, Pennsylvania; and Richmond, California. These offices, along with the Office of International Operations and the Office of Disability Operations in Baltimore, Maryland, house and service the records of individuals who are receiving Social Security benefits.

110.7. What is the purpose of the Office of Hearings and Appeals?

The Office of Hearings and Appeals oversees the nationwide hearings and appeals program for the Social Security Administration. Administrative law judges hold hearings and make decisions when a claimant or organization appeals a decision affecting rights to benefits or participation in Social Security programs.

110.8. *Where are administrative law judges located?*

Administrative law judges are located in or travel to major cities throughout the U.S., Puerto Rico, the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa. The Appeals Council, located in Falls Church, Virginia, also may review hearing decisions. (See Chapter 20.)

110.9. *What is the purpose of the Office of Central Records Operations?*

The Office of Central Records Operations maintains records of individuals' earnings and prepares benefit computations.

110.10. *Where is the Office of Central Records Operations located?*

The major operations are located in Salinas, California; Albuquerque, New Mexico; and Wilkes-Barre, Pennsylvania. (See §113 and §114.) Data processing is the responsibility of the Office of Systems located in Baltimore, Maryland.

111. Program service center functions.

111.1. *What functions do the program service centers perform?*

Program service centers act as processing centers. They make formal decisions as to entitlement on many claims for Social Security benefits (See § 110). (See § 116 regarding disability insurance benefits; Chapter 24 regarding payment of hospital and medical insurance benefits; Chapter 21 regarding SSI claims; and § 115 regarding claims from beneficiaries residing abroad.)

At the program service center, a permanent claims folder is set up for the claims material. It may be reviewed for the following:

- A. To see that the necessary applications and forms have been properly completed;
- B. To make sure all the evidence needed for the claim has been obtained;
- C. To ensure all requirements set by law have been met; and
- D. To check that all benefit amounts have been figured correctly.

111.2. *How are you notified by the program service center when it makes a decision on your claim?*

If the program service center finds that you are entitled to benefits, your claim is approved and the U.S. Treasury Department is notified that payment should be made. If you are entitled to hospital or medical insurance protection, the program service center advises you of the decision and sends you a health insurance identification card. If you

are not entitled to monthly benefits or to hospital or medical insurance protection, your claim is denied.

The program service center prepares and mails the notice of award or denial to you. This notice shows the type and amount of benefit awarded; or explains why the claim was not approved and how you may appeal.

112. Reconsideration by program service center.

112.1. What can you do if you do not agree with Social Security's decision about your claim?

If you are not satisfied with the decision made on a claim or if you want further explanation regarding the action taken, contact a Social Security office for advice or appropriate referral.

112.2. What does SSA do when you appeal a decision?

If there is a request for reconsideration, we send the claims folder to a special group in the program service center, such as the Disability Determination Services, the Office of Disability Operations, or the Office of International Operations. There your case is reviewed and any necessary corrective action is taken. (See Chapter 20.)

For SSI Cases, we process requests for reconsideration and decide non-disability issues.

113. Where are earnings records maintained?

If you are assigned a Social Security number, your earnings records are maintained at the Office of Central Records Operations of the Social Security Administration in Baltimore, Maryland. These earnings records are kept so that when it is time to decide on your eligibility for Social Security benefits and benefit amount, your earnings history is available.

114. Recording earnings credits.

114.1. Where are earnings reports processed?

We send earnings reports of employees and self-employed persons to the Office of Central Records Operations. Employer reports of earnings are received in the central office and in other facilities in Salinas, California; Albuquerque, New Mexico; and Wilkes-Barre, Pennsylvania. These earnings amounts are credited to each person's record.

114.2. What happens if there is an error in your earnings report?

If there is any error in your earnings report, or if your Social Security number or name is reported incorrectly, the Office of Central Records

Operations investigates so that it can correct the error. It also decides if your reported earnings are covered by Social Security.

The Office of Central Records Operations may write directly to you or your employer to get information needed to clarify your earnings report. If necessary, it may ask a Social Security office to get directly in touch with you to resolve any problem or obtain information needed to determine if your work is covered by Social Security.

115. SSI claimants residing abroad.

115.1. Where is your case handled if you live overseas?

If you live overseas, your SSI payments are handled by one of the following:

- A. If you are a **blind or disabled child of military parents stationed overseas**, your case is handled by the Social Security office in Cumberland, Maryland;
- B. If you are a **temporarily abroad student**, your case is handled by any Social Security office; or
- C. If you are **any other claimant living abroad**, your case is handled in the Office of International Operations of the Office of Disability and International Operations (ODIO).

115.2. What is the Office of Disability and International Operations?

ODIO receives, develops, and settles Social Security claims of persons residing outside the U.S. This office also acts on requests for reconsideration. ODIO receives assistance from the State Department's Foreign Service posts around the world, the American Institute in Taipei (Taiwan), and the Veterans Affairs Regional Office in the Philippines to carry out this mission.

115.3. When are you considered "outside the U.S." for claims settlement purposes?

For claims settlement purposes, you are considered outside the U.S. if you are physically outside the 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

115.4. Where do you report events that could affect your benefits if you live abroad?

If you are a beneficiary living in a foreign country, report the events described in §133 to one of the following:

- A. The nearest Social Security office;
- B. One of the offices listed above; or

C. The Social Security Administration, Post Office Box 17769, Baltimore, Maryland 21235-7769.

115.5. *Where do disabled children of military parents stationed overseas report events that could affect their benefits?*

Blind or disabled children of military parents stationed overseas should report the events in §133 to one of the following:

- A. The U.S. Embassy;
- B. The nearest U.S. Consular Office; or
- C. The Social Security Administration, Winchester and Vocke Roads, Cumberland, Maryland 21502, Attention: International Coordinator.

115.6. *Where do you send correspondence concerning totalization claims?*

The Office of International Operations is responsible for all claims under the international totalization agreements described in §107. This is true even if you live in the U.S. Send any correspondence concerning totalization claims to the Social Security Administration, Post Office Box 17049, Baltimore, Maryland 21235.

116. Determinations of disability.

116.1. *How does SSA determine disability cases?*

Disability Determination Services (DDS) generally makes decisions on disability cases. These services are agencies of each State. We make disability insurance determinations for persons living outside the U.S., and for a few other applicants whose cases are not covered under the Federal-State regulations.

The evaluation team makes every reasonable effort to obtain medical evidence from your treatment sources. This team is composed of a medical or psychological consultant and a lay disability evaluation specialist. The evaluation team is responsible for making the disability determination.

116.2. *Who checks to make sure that determinations made on disability cases are correct?*

Our Office of Quality-Assurance and Performance Assessment reviews a continuing sample of DDS determinations. This office ensures that DDS decisions are correct, consistent, and in line with national policies and standards. Office of Quality-Assurance and Performance Assessment may reverse DDS findings.

116.3. What can you do if you do not agree with our determination about your claim?

If you are not satisfied with the decision made on a claim, you may appeal. You may request reconsideration and submit new evidence if it is available. A reconsideration determination for disability claims is generally made by the DDS where the original decision was made. A special group in the Office of Disability Operations reviews your appeal. If you appeal your case further, an administrative law judge or the Appeals Council of the Office of Hearings and Appeals may issue an separate decision. (See Chapter 20.)

SERVICES OF SSA

117. Information program of Social Security office.

117.1. Where can you obtain information about your rights under Social Security?

Social Security offices conduct an Information Program to keep you informed of your rights and obligations under the Social Security law. Our offices also conduct outreach programs to locate and assist people who are potentially eligible for benefits.

117.2. What do offices participating in the Information Program do?

The offices keep on hand supplies of publications, exhibit posters, and videos. The office staff:

- A. Makes presentations before civic, labor, medical, farm, management, school, and other groups and organizations interested in our programs;
- B. Prepares or provides articles about Social Security for local newspapers and magazines;
- C. Develops special exhibits illustrating features of the Social Security program; and
- D. Prepares and presents radio and television programs about Social Security and SSI.

You may make arrangements with the Social Security office to obtain any of the informational materials listed above, to view a video, to have an exhibit set up, or to have a member of the office staff speak before a group or organization.

The Social Security offices also participate in community programs and activities in the fields of aging, blindness, disabilities (including AIDS/HIV, mental health, and substance abuse), child welfare, and economic opportunity.

118. Information required by law to be made available to the public.

118.1. What laws require SSA to release information?

We are required, along with all Federal agencies, to comply with the Freedom of Information Act and the Privacy Act. These laws control the type and scope of information that may be released and to whom it may be released.

118.2. What information is made available to the public under the Freedom of Information Act?

The Freedom of Information Act makes the following types of information available to the public:

- A. Statement of organization;
- B. Administrative procedures;
- C. Policies;
- D. Interpretations of law; and
- E. Precedent decisions that affect the public.

The type of information above is available unless it falls within one of the law's specific exceptions. Generally, information on your earnings may be disclosed only to you, or for purposes of administering Social Security programs. Revealing earnings information is generally governed by Section 6103 of the Internal Revenue Code, as amended (26 U.S.C. 6103).

118.3. When can additional information be made available under the Freedom of Information Act?

Under the Freedom of Information Act, information about your Social Security record, other than items (A) - (E) above, may not be revealed to "the public" without your permission. "The public" generally includes any requester other than a Federal agency or a Federal State, or local court.

Additional information is only made available if the requesting party can demonstrate that revealing information would shed light on how the Federal Government operates to a degree that outweighs your rights and expectations of privacy.

118.4. What information is made available to the public under the Privacy Act?

The Privacy Act requires Federal agencies to publish notices of systems of records they maintain that contain personal information about individuals. This information is published in the *Federal Register*. Under the Privacy Act, information about you is generally not disclosed without your permission, except as provided by that law.

118.5. Can you access information maintained under the Privacy Act?

You have the right to gain access to information pertaining to you. You may have a copy made of your own record, request a correction to your record, or amend your record. There are special procedures for accessing medical records. Direct your request for information from these systems of records to the local Social Security office or the manager of the pertinent system of records. There is generally no charge to obtain information contained in your file.

118.6. What are “Informational Facilities”?

We have “Informational Facilities” that contain various legal publications, informational publications about us, and several manuals of instructions used in processing Social Security and SSI claims. This information is available to the public.

118.7. What type of information can you access at Informational Facilities?

The following is a partial list of the materials available to you at our Informational Facilities:

- A. Compilation of the Social Security Laws;
- B. Social Security Administration Regulations Nos. 1, 4, 10, 16, and 22;
- C. Social Security Rulings;
- D. Acquiescence Rulings;
- E. Program Operations Manual System;
- F. Social Security Handbook;
- G. Handbook for State Social Security Administrators;
- H. Part A Intermediary Manual;
- I. Medicare Carrier's Manual; and
- J. Hospital Manual.

Our case decisions that set precedence, policy interpretations of the law, and regulations are published as Social Security Rulings. The Social Security Regulations contain the rules and policies of general applicability used in administering the Social Security Act.

118.8. Is there a charge for using information provided by the Informational Facilities?

Generally, there is no charge for information needed for program purposes. If information is provided for non-program purposes, a charge is made, subject to some exceptions.

119. Does the Social Security office make referrals to other government or community agencies?

If you need health or human services that are not available under Social Security, the Social Security office refers you to a government or community agency. Each Social Security office maintains a list and the types of services provided by the agencies (both public and private) in your community. The Social Security office can immediately refer you to the agency providing the services you need.

DISBURSEMENT OF BENEFIT PAYMENTS

120. Social Security benefits payable.

120.1. Are you eligible for monthly Social Security benefits?

You may be eligible for monthly Social Security benefits if you are any of the following:

- A. A disabled insured worker under age 65;
- B. A retired insured worker age 62 or over;
- C. The spouse of a retired or disabled worker entitled to benefits who:
 - 1. Is age 62 or over; or
 - 2. Has in care a child who is either under age 16, or over age 16 and disabled, who is entitled to benefits on the worker's Social Security record.
- D. The divorced spouse of a retired or disabled worker entitled to benefits if you are at least 62 and married to the worker for at least 10 years;
- E. The divorced spouse of a fully insured worker (see §203) who:
 - 1. Has not yet filed a claim for benefits if both you and your ex-spouse are at least 62;
 - 2. Was married for at least 10 years; and
 - 3. Has been finally divorced for at least two years in a row.
- F. The dependent, unmarried child of a retired or disabled worker entitled to benefits, or of a deceased insured worker if you are:
 - 1. Under age 18;
 - 2. Under age 19 and a full-time elementary or secondary school student; or
 - 3. Age 18 or older but under a disability which began before age 22.

- G. The surviving spouse (including a surviving divorced spouse) of a deceased insured worker if you are age 60 or older;
- H. The disabled surviving spouse (including a surviving divorced spouse in some cases) of a deceased insured worker if you are age 50-59 and become disabled within the period specified in §513;
- I. The surviving spouse (including a surviving divorced spouse) of a deceased insured worker, regardless of age, if you are caring for an entitled child of the deceased who is either under age 16 or disabled before age 22; or
- J. The dependent parents of a deceased insured worker age 62 or over.

Note: In addition to monthly survivors benefits, a lump-sum death payment is payable upon the death of an insured worker. (See §§428-433.)

120.2. Are you eligible for a “special monthly payment”?

A **special monthly payment** can be made if you turn 72 before 1968 and never worked in employment covered by Social Security.

If you turned 72 between 1968 and 1971, you must have Social Security coverage to qualify for the special monthly payment. This benefit is **not available** if you turned 72 after 1971. (See §§346-348.)

121. Who issues Social Security benefits and SSI payments?

Social Security benefits and SSI payments are issued by the U.S. Treasury Department, not by the program service centers. However, if you have any questions about your direct deposit or check, get in touch with a Social Security office.

122. Payment dates.

122.1. When are your payment days if you filed for benefits before May 1, 1997?

Social Security payments are usually dated and delivered on the third day of the month following the month for which the payment is due. For example, payments for January are delivered on February 3. If the third of the month is a Saturday, Sunday or Federal holiday, payments are dated and delivered on the first day preceding the third of the month which is not a Saturday, Sunday, or Federal holiday. For example, if the third is a Saturday or Sunday, payments are delivered on the preceding Friday.

122.2. When are your payment days if you filed for benefits after May 1, 1997?

If you file for Social Security benefits May 1, 1997, or later, you are assigned one of three new payment days based on the date of birth of the person on whose record your entitlement is established (the insured individual):

- A. The payment day for insured individuals **born on the 1st through the 10th** of the month is the second Wednesday of each month;
- B. The payment day for insured individuals **born on the 11th through the 20th** of the month is the third Wednesday of each month; and
- C. The payment day for insured individuals **born after the 20th** of the month is the fourth Wednesday of each month.

If the scheduled Wednesday payment day is a Federal holiday, payment is made on the preceding day that is not a Federal holiday.

122.3. When are you paid on the 3rd of the month, even if you file for benefits after May 1, 1997?

You will receive your Social Security payment on the third of the month if you are any of the following:

- A. An SSI beneficiary;
- B. A beneficiary whose income is deemed to an SSI recipient;
- C. A beneficiary whose Medicare premiums are paid for by the state in which you live;
- D. A beneficiary living in a foreign country;
- E. A beneficiary entitled to payments on the third of the month who later became entitled on another record, as long as there is no break in your entitlement;
- F. A Black Lung beneficiary;
- G. A Railroad Retirement Board beneficiary; or
- H. A recipient of garnished payments, tax levy case payments, and payments made via the critical payment system.

122.4. Can payment days be changed?

If you are paid on the third of the month, you can volunteer to change your payment day as long as all beneficiaries receiving benefits on your record agree. The date-of-birth formula determines the payment cycle for beneficiaries. The decision to change to a cycled payment day is permanent.

122.5. When are the payment days for SSI?

SSI payments are usually dated and delivered on the first day of the month that they are due. However, if the first falls on a Saturday, Sunday, or Federal holiday, they are dated and delivered on the first day preceding the first of the month that is not a Saturday, Sunday, or Federal holiday.

123. Direct deposit of benefits.

123.1. What is “direct deposit”?

Using direct deposit, payments are sent electronically to an account in a financial institution. The financial institution can be a bank, trust company, savings and loan association, or credit union.

123.2. Do you have to receive your Social Security and SSI benefits by direct deposit?

Direct deposit is now the standard way to receive Social Security and SSI benefits. The law requires that after December 1998, with limited exceptions, all Federal benefits must be paid through some form of direct deposit.

123.3. How do you sign up for direct deposit?

You can sign up for direct deposit through your financial institution or by calling Social Security's toll free number, 1-800-772-1213.

123.4. How can you get direct deposit if you live outside the U.S.?

We have an international direct deposit (IDD) program in certain countries outside the U.S. If you live in a country that has an IDD program, you must participate in the program. If you live in a country where no IDD program exists, you are exempt until such a program is available. However, you may have direct deposit to an account in the U.S. or any IDD country.

123.5. What information do you report to Social Security if you have direct deposit?

If you have direct deposit, you must advise us of a change of your address or residence. This is important so we can communicate with you and mail necessary forms, etc. when necessary.

124. Checks.

124.1. What is your time limit for cashing Social Security checks?

Checks are issued with the words “VOID AFTER ONE YEAR” printed across the face of the check. If you have a check that you have not

cashied past the one-year time limit, you will not be able to cash it. Contact a Social Security office to have the check reissued.

124.2. How are checks sent to beneficiaries living outside of the U.S.?

If you live outside the U.S., your check is mailed either from the U.S. Treasury Department or from a U.S. diplomatic or consular office in the country you are living. In a few countries, special arrangements are made for check delivery. Because of the distance and additional handling involved, your checks are generally delivered somewhat later than if you were living in the U.S.

124.3. What should you do if you do not receive your check?

If you are living in the U.S. and you do not receive your check within three business days after it is usually mailed, contact the Social Security office right away. Also call the Social Security office if your check has been stolen, lost, destroyed, or forged. Be prepared to provide the Social Security office with the following information:

- A. The claim number (see §133) on which the benefit is being paid;
- B. The period of payment covered by the missing check (or checks);
and
- C. The name and address which should be shown on the check.

124.4. How do you report a change of address?

If your address changes, report the change to the Social Security office right away, either by telephone or in writing. Provide your Social Security claim number and your old address, including the ZIP code, so that any check already printed can be found and sent to your new address. Also, notify the post office of your change of address to ensure prompt delivery of your check.

Note: If there is any doubt as to the authenticity of a telephone report, the Social Security office requests written confirmation from you.

125. How do you endorse your check if you cannot sign your name?

If you are unable to sign your name, signature by mark is acceptable. Two individuals who sign their own names and show their complete addresses must witness your signature by mark.

126. Entitlement to retirement, survivors, and disability insurance benefits.

126.1. What are “Social Security benefits”?

Social Security benefits are payments made under a social insurance program administered by the Social Security Administration. They are paid monthly by check or direct deposit to the beneficiary or to a representative payee if the beneficiary is incapable of managing his or her own funds (see Chapter 16).

126.2. How can you receive retirement, survivors, and disability insurance benefits?

Retirement, survivors, and disability insurance benefits are Social Security benefits. In order to receive these benefits, you must file an application with us. You must also meet certain eligibility requirements.

126.3. Are your Social Security benefits subject to taxes?

If you have substantial income in addition to your Social Security benefits, up to 85 percent of your annual benefits may be subject to Federal income tax.

The amount of benefits subject to Federal income tax is the smaller of:

- A. One-half of your benefits; or
- B. One-half of the amount by which your adjusted gross income, **plus** tax-exempt interest, **plus** one-half of your Social Security benefits exceeds:
 - 1. \$25,000 if you are single;
 - 2. \$25,000 if you are married and **not** filing a joint return and you did **not** live with your spouse at any time during the year;
 - 3. \$32,000 if you are married and filing a joint return; or
 - 4. \$0 if you are married and **not** filing a joint return and you **did** live with your spouse at any time during the year.

In January, we send you a Form 1099 (*Social Security Benefit Statement*), showing the amount of benefits you received in the prior calendar year. A worksheet (IRS Notice 703) is included for determining whether any portion of your Social Security benefits received is subject to income tax.

126.4. What is your tax rate if you are a non-U.S. citizen?

If you are not a U.S. citizen or resident, Federal income taxes are withheld from your benefits. The tax is 30 percent of 85 percent of your benefit (an effective tax rate of 25.5 percent).

This tax rate is withheld from the benefits of all nonresident aliens, unless you live in a country with which the United States has a tax treaty. Tax treaties do not permit taxing of U.S. Social Security benefits (or provide for a lower tax rate).

126.5. *With what countries does the U.S. have tax treaties?*

The United States has tax treaties with Canada, Egypt, Germany, Ireland, Israel, Italy, Japan, Romania, Switzerland, and the United Kingdom (defined as England, Scotland, Wales, and Northern Ireland). In addition, if you live in and are a citizen of India, your Social Security benefits are exempt from Federal taxes to the extent that your benefits are based on Federal, State or local government employment. (This list can change from time to time.)

126.6. *How do you know the amount of taxes withheld from your benefits?*

At the end of each year, we send a Form 1042S (*Social Security Benefit Statement*) to each beneficiary. This statement shows the amount of taxes withheld from your Social Security benefits.

127. Supplemental Security Income benefits.

127.1. *What is “Supplemental Security Income (SSI)”?*

Supplemental Security Income (SSI) is a Federal program administered by SSA. The SSI program was established to provide cash assistance to individuals who:

- A. Have limited income and resources;
- B. Are age 65 or older;
- C. Are blind; or
- D. Are disabled.

Children are also included in the SSI program.

127.2. *Who receives SSI payments?*

SSI checks or direct deposits (see §123) are paid either directly to the eligible person or to a representative payee (see Chapter 16) if the person is incapable of managing benefits. Chapter 21 explains the SSI program in more detail.

128. Hospital and medical insurance benefits provided.

128.1. *What is “Medicare”?*

The Health Insurance Program, commonly known as “Medicare”, provides comprehensive health insurance protection to the aged, disabled, and those suffering from end-stage kidney disease.

128.2. What are the parts of the Medicare program?

There are two parts to the Medicare program. (See Chapter 24.)

Medicare hospital insurance (Part A) helps pay for inpatient hospital care, inpatient care in a skilled nursing facility, home health care, and hospice care. **Medicare medical insurance (Part B)** helps pay for physician services, outpatient hospital services, outpatient physical therapy, other medical services, and supplies and equipment that are covered by Part A.

128.3. Who administers the Medicare program?

The Health Care Financing Administration administers the Medicare program. It sets the standards for hospitals, skilled nursing facilities, home health agencies, hospices, and other providers and suppliers of services in order to receive payment for Medicare-covered services and items. The Health Care Financing Administration sets the standards to be used by Utilization and Quality Peer Review Organizations, intermediaries, and carriers in making payment and coverage decisions for health care furnished to individuals who have hospital and/or medical insurance.

128.4. What role does SSA have in the Medicare program?

We provide beneficiary services for the Medicare program. Social Security offices accept and process applications for enrollment and respond to beneficiary and public inquiries. We also perform some data processing support and premium billing and collection activities.

129. Benefits unassignable.

129.1. Can you assign future Social Security benefits?

No, you cannot assign future Social Security benefits and SSI payments.

129.2. Can your Social Security benefits be levied or garnished?

The Internal Revenue Service can levy your Social Security benefits if you have any unpaid Federal taxes. Your benefits can also be garnished in order to collect unpaid child support and or alimony. SSI payments cannot be levied or garnished.

129.3. Can you voluntarily withhold money to meet your tax liability (voluntary tax withholding)?

You may ask to have a percentage of your monthly payment amount withheld and paid each month to the Internal Revenue Service to help meet your Federal income tax liability.

129.4. What types of payments are not subject to voluntary tax withholding?

The following types of payments are not subject to voluntary tax withholding:

- A. SSI payments;
- B. Black Lung payments;
- C. Medicare premium refunds;
- D. Lump-sum Death Payments; and
- E. Returned check reissuances.

130. Special request for expedited benefit payment.

130.1. Can you ask to expedite your benefit payment if it was not received on time?

If you did not receive your Social Security benefit for a particular month, you may file a written request for prompt payment. Your request is considered filed at the end of the period if you file your request before the end of:

- A. 90 days after the date that you provided all the evidence requested to support the claim;
- B. If later, 90 days after the date on which payment is supposed to have been due; or
- C. If you received a regular monthly benefit in the prior month, 30 days after the 15th day of the month in which payment is supposed to have been due.

If you file your request under condition (A), (B), or (C) above, benefits are due and you will be paid within 15 days after the end of the period. If it appears that benefits are probably due, preliminary payment may be made without regard to these time limits, even if additional evidence is needed for a final decision.

130.2. What types of benefit payments can NOT be expedited?

Expedited payment procedures do not apply to disability insurance benefits or to SSI payments. These types of payments are more complex. Expedited payments also do not apply in cases where a check was issued and the U.S. Treasury Department records show the check was cashed. In these instances, check investigation is conducted by the U.S. Treasury Department rather than us. In both situations, the delays are reported to us.

131. Checks to husband and wife.

131.1. Are separate Social Security benefit checks mailed to husbands and wives?

Separate payments for Social Security benefits are made to a husband and wife if one or both have direct deposit. However, monthly benefits payable to a husband and wife who are entitled on the same Social Security record and who are living at the same address may be combined in one joint check.

131.2. What if your spouse dies and combined checks are usually paid?

If your husband or wife dies, the combined check for the month of death (or month before the month of death) can be made payable to you. If you return the check to the Social Security office in person or by mail, that office makes it payable to you.

Mail carriers who know of the death of your spouse can return the check to the U.S. Treasury Department so it can be made payable to you. This procedure permits you to cash the check. Amounts not due you are withheld from later checks. (See §135.)

131.3. Are separate Supplemental Security Income benefit checks mailed to husbands and wives?

If you and your spouse receive SSI payments, you will receive separate checks, even if you live in the same household.

If your spouse dies, return any checks not cashed to the Social Security office. Payments due your spouse will be paid to you as long as you were living together within six months before the death of your spouse, even if you are not eligible for SSI.

132. Are separate Social Security benefit checks mailed to each child in a family?

If the children do not have direct deposit, Social Security benefits for minor children in one family unit are usually combined in one check. If the children regularly live in different households, separate checks are issued to each family group that does not have direct deposit.

BENEFICIARY'S OBLIGATIONS

133. Events reportable by beneficiary to Social Security office.

You must notify the Social Security office of any event affecting your eligibility for payment. These are known as “reportable events”. The office makes the change in your record or forwards the information to

the program service center. Be sure to show your Social Security claim number.

133.1. What is the “claim number”?

If you are an **SSI beneficiary**, your claim number is your nine-digit Social Security Number (SSN) (000-00-0000) followed by two letters such as EI, DI, ES, etc.

If you are a **Social Security beneficiary**, your claim number is the nine-digit SSN followed by one or more letters such as A, B, C, HA, etc.

133.2. What events must you report immediately under Social Security?

Persons receiving Social Security benefits on behalf of themselves or another must immediately report any of the following events to us:

- A. A beneficiary (other than a disabled individual) is working and has, or expects to have, more earnings than the amount exempted under the earnings test explained in Chapter 18;
- B. The marriage of a person who is entitled to child's, widow(er)'s, mother's, father's, parent's, or divorced spouse's insurance benefits;
- C. A beneficiary under age 62 entitled to spouse's, mother's, or father's insurance benefits who no longer has in care a child under age 16 or disabled that is entitled to benefits;
- D. A person entitled to benefits because of disability has either (1) returned to work; or (2) the condition has improved so that he or she is able to work;
- E. A non-disabled child beneficiary age 18 or over no longer attending elementary or secondary school full-time;
- F. The death of a beneficiary;
- G. A beneficiary works outside the U.S. for more than 45 hours in a calendar month;
- H. A person under age 65 who is entitled because of disability becomes entitled to compensation benefits; or there is a change in the public disability payment rate;
- I. Imprisonment for a conviction of a criminal offense that carries a sentence of more than one year;
- J. Individuals confined by court order to an institution at public expense following a verdict or finding that an individual has been found guilty by reason of insanity or similar verdict;
- K. A person begins to receive a governmental pension or annuity; or there is a change in a present pension amount and the person receives a spouse's Social Security benefit;

- L. A beneficiary leaves the U.S.;
- M. A beneficiary's citizenship or alien status changes; or
- N. A retirement or disability beneficiary is divorced from the parent of an entitled stepchild.

133.3. What events must the recipient or the representative payee report immediately under Supplemental Security Income (SSI)?

Any of the following events must be reported immediately to us on behalf of persons receiving SSI payments:

- A. A change in living arrangements, including a change in residence, mailing address, marital status, or amount of earned or unearned income;
- B. The death of the recipient or anyone with whom he or she lives;
- C. A disabled or blind recipient goes to work or has improvement in his or her condition;
- D. A change in ownership or value of real or personal property (including those belonging to a living-with spouse or parent);
- E. A change in the amount of earned or unearned income of a living-with spouse or parent, or of the sponsor of an alien;
- F. A recipient enters or leaves an institution;
- G. A recipient leave the U.S. for more than 30 days;
- H. A recipient under age 22 is no longer attending school full-time;
- I. A recipient's citizenship or alien status changes;
- J. A recipient is fleeing to avoid criminal prosecution;
- K. A recipient is taken into custody or confinement after conviction of a crime that is a felony;
- L. A recipient is violating a condition of probation or parole imposed under Federal or State law; or
- M. A recipient becomes eligible for other benefits.

133.4. What happens after you notify SSA of a reportable event?

Based on the information provided, the Social Security office or the program service center adjusts benefit payments and notifies the beneficiary of the action.

133.5. What are the consequences if you do not notify SSA of a reportable event?

If you fail to make reports promptly, there may be monetary penalties. (See Chapter 18 and §2126.)

134. Returning checks to the Social Security office.

134.1. When must you return checks to the Social Security Office?

If you received a check from us and you are not entitled to the payment, you must return the check. Returning checks helps permit prompt payment when you become entitled and may save you from the possible penalties described in §§1820, 1828, and 1831.

134.2. How do you return Social Security checks?

Return the check to the Regional Financial Center, U.S. Treasury Department, located in the city shown on the face of the check. If you prefer, you may return the check to the Social Security office. That office will give you a receipt for the check and will return the check to the U.S. Treasury Department. When returning a check, give the reason why it is being returned.

135. What is done if you receive more money than you are entitled?

If you cash a check to which you are not entitled, a refund is ordinarily required. Often the program service center withholds later checks to make up for the overpayment. However, if this is not done you must refund the money.

Contact the Social Security office to find out if a refund is necessary. If so, make the refund to the Social Security office, or program service center that handled the claim. Refunds may be made by check, money order, or other draft payable to the Social Security Administration. Be sure to show your Social Security claim number so that it can be associated with the proper claims folder.

FUNDING THE PROGRAMS

136. Sources of funds for Social Security and Supplemental Security Income benefits.

136.1. How are Social Security benefits funded?

To pay for Retirement, Survivors, Disability Insurance, and Hospital Insurance Benefits, taxes are collected from employers, employees, and the self-employed who are working in jobs and businesses covered by Social Security.

136.2. How are SSI payments funded?

SSI payments are paid from the general revenues of the U.S. and in States which supplement the Federal benefits from State funds.

137. How are hospital insurance benefits funded?

Hospital Insurance Benefits are either paid from the general revenues of the U.S. or by monthly premium payments. Funding depends on the circumstances of eligibility.

138. How are medical insurance benefits funded?

To pay for Medical Insurance Benefits, the law provides for the collection of monthly premiums. The people enrolled in the program (or in some cases, the State) pay these premiums. (See §2424.) Since the premiums cover only about one-fourth of the cost of the program, the Government pays the remaining amount from general revenues.

139. Where are money gifts to Social Security deposited?

Unconditional money gifts to Social Security may be accepted and deposited in whatever Social Security trust fund is designated by the donor. If no specific fund is designated, the gift is deposited in the Federal Old-Age and Survivors Insurance Trust Fund.

TRUST FUNDS

140. Trust funds available for benefits.

140.1. Where are Social Security tax amounts deposited?

Amounts equivalent to the Social Security taxes are deposited in three separate trust funds:

- A. The Federal Old-Age and Survivors Insurance Trust Fund;
- B. The Federal Disability Insurance Trust Fund; and
- C. The Federal Hospital Insurance Trust Fund.

The Federal Hospital Insurance Trust Fund also receives the amounts appropriated from general revenues on account of “uninsured” persons age 65 and over (see §137).

140.2. What is the “Federal Supplementary Medical Insurance Trust Fund”?

The Federal Supplementary Medical Insurance Trust Fund receives the amounts collected as premiums for medical insurance coverage and the amounts appropriated from general U.S. revenues. This trust fund covers the Government's share of the cost of the program.

140.3. Who is responsible for managing the trust funds?

The funds are held by a Board of Trustees for the Social Security Trust Funds. By law, the Board of Trustees is composed of the Secretary of the Treasury, the Secretary of Labor, the Secretary of Health and Human Services, and two members of the public appointed by the

President and confirmed by the Senate. The Commissioner of Social Security serves as the Secretary of the Board of Trustees for the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund. The Administrator of the Health Care Financing Administration serves as Secretary of the Board of Trustees for the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund.

140.4. *Where is the money in the trust funds spent?*

The deposits in the four trust funds are used for the retirement, survivors, disability, hospital, and medical insurance programs. The trust funds also cover administrative expenses associated with these programs. Excess funds are invested in interest-bearing Federal securities.

FRAUD

141. What investigative responsibilities does SSA have in administering the Social Security program?

In administering the retirement, survivors, disability insurance, and the SSI programs, we must:

- A. **Provide benefits to people who are entitled to them** under the provisions of the Social Security Act; and
- B. **Protect the Social Security trust funds and the general revenues** by denying benefits when not due.

In carrying out these responsibilities, we investigate all questionable actions and statements made in connection with claims for benefits or earnings records. If there is adequate evidence that a criminal provision was violated, the case may be referred to the Department of Justice for prosecution.

142. Fraud in connection with benefit claims and earnings records.

142.1. *When can you be prosecuted for Social Security fraud?*

You may be prosecuted as a criminal for fraud if you knowingly:

- A. Furnish false information as to your identity in connection with the establishment and maintenance of Social Security records;
- B. For the purpose of increasing your payment under Social Security or any other Federally funded program; or for the purpose of obtaining such payment:

1. Use a Social Security number obtained on the basis of false information; or
 2. Falsely represent a number to be your Social Security number;
- C. Make or cause to be made a false statement or misrepresentation of a material fact for use in determining your rights to Social Security or SSI benefits;
- D. Make or cause to be made any false statement or representation as to:
1. Whether wages were paid to you, the period during which wages were paid, or the amount of your wages; or
 2. Whether you have net earnings from self-employment, the amount of your earnings, or the period during which you earned the money;
- E. Conceal or fail to report any event affecting the initial or continued right to payment received or to be received by you personally or on behalf of another; or
- F. Use payment received on behalf of another for any purpose other than the use for the benefit of that person.

Other penal provisions contained in the Social Security Act or in the Federal Criminal Code may also apply to offenses affecting the Social Security program.

We will prosecute even if a fraudulent act is discovered before wrongful payments are made by the Government.

142.2. What is the penalty for conviction?

The penalty upon conviction for violation of the penal provisions of the Social Security Act, or one of the related provisions of the Federal Criminal Code, may be a fine, imprisonment, or both. The penalty ranges from a fine of not more than \$500, imprisonment of one year, or both, to a fine of not more than \$10,000, imprisonment of not more than 15 years, or both. The penalty depends upon the specific law violated.

CHAPTER 2

BECOMING INSURED

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INSURED STATUS

200. Insured status requirements.

200.1. Why is insured status important?

You must be insured under the Social Security program before retirement, survivors, or disability insurance benefits can be paid to you or your family.

200.2. Are Social Security credits used to determine insured status?

We consider the number of Social Security credits you earned to determine if you have:

- A. Fully insured status;
- B. Currently insured status; or
- C. Insured status for establishing a period of disability.

You earn Social Security credits (previously called quarters of coverage) for a certain amount of work covered under Social Security. (See §§211-215.)

201. How does SSA determine insured status?

We use your lifetime earnings record reported under your Social Security Number (SSN). The number of quarters you have covered credits determine if you have enough credits for insured status.

202. If you have fully insured status, can you receive all types of benefits?

Insured status is required before you can receive any type of benefit. “Fully insured status” is only one requirement for determining whether you receive a particular type of benefit. However, it does **not** mean that you can receive all types of benefits on your Social Security record, or does it have anything to do with the amount of benefits that are paid.

203. Fully insured status defined.

203.1. When are you “fully insured”?

You are fully insured if:

- A. You have at least one credit for each calendar year after 1950; or
- B. If later than 1950, you have at least one credit for each calendar year after you turned 21 and the earliest of the following:

1. The year before your turn 62;
2. The year you die; or
3. The year you become disabled.

You can obtain covered credits and count them in any year.

203.2. Are there any exceptions to determining fully insured status (as above)?

The following individuals are also fully insured:

- A. **Males born before January 2, 1911**, need one credit for each year after 1950 up to the year below that occurs first:
1. They turn 65;
 2. They die; or
 3. They become disabled; and
- B. **Males born from January 2, 1911, through January 1, 1913**, need one credit for each year after 1950 up to the year below that occurs first:
1. 1975;
 2. They die; or
 3. They become disabled.

203.3. Are years included in a period of disability counted to determine credits?

In determining the number of years to be used in computing your credits, any year (all or part of a year) that was included in a period of disability is not counted.

203.4. Do you need a minimum number of credits in order to be fully insured?

In order to be considered for fully insured status, you need at least six credits. No more than 40 credits are required, regardless of your date of birth.

203.5. Are there special benefits if you turned 72 before 1972?

If you turned 72 before 1972, you may be entitled to a special cash monthly payment. This is true even if you are not fully insured (see §211 and §346).

204. Chart of credits required to be fully insured.

204.1. How many credits do you need if you were born on or before January 1, 1913, to be fully insured?

For people born before January 1, 1913, the number of credits needed to be fully insured is different for men and women. The following chart shows the number of credits you need if you were born before January 1, 1913.

Credits needed - fully insured status.

If your date of birth is...	Then you need the following number of credits...	
	Men	Women
1/1/1893 or earlier	6	6
1/2/93-1/1/94	7	6
1/2/94-1/1/95	8	6
1/2/95-1/1/96	9	6
1/2/96-1/1/97	10	7
1/2/97-1/1/98	11	8
1/2/98-1/1/99	12	9
1/2/1899-1/1/1900	13	10
1/2/00-1/1/01	14	11
1/2/01-1/1/02	15	12
1/2/02-1/1/03	16	13
1/2/03-1/1/04	17	14
1/2/04-1/1/05	18	15
1/2/05-1/1/06	19	16
1/2/06-1/1/07	20	17
1/2/07-1/1/08	21	18
1/2/08-1/1/09	22	19
1/2/09-1/1/10	23	20

If your date of birth is...	Then you need the following number of credits...	
	Men	Women
1/2/10-1/1/11	24	21
1/2/11-1/1/12	24	22
1/2/12-1/1/13	24	23

204.2. How many credits do you need if you were born on or after January 2, 1913, to be fully insured?

For people born on or after January 2, 1913, the number of credits needed to be fully insured is the same for men and women. The chart below shows the number of credits you need if you were born on or after January 2, 1913.

Credits needed - fully insured status.

If your date of birth is...	The you need the following number of credits...
1/2/13-1/1/14	24
1/2/14-1/1/15	25
1/2/15-1/1/16	26
1/2/16-1/1/17	27
1/2/17-1/1/18	28
1/2/18-1/1/19	29
1/2/19-1/1/20	30
1/2/20-1/1/21	31
1/2/21-1/1/22	32
1/2/22-1/1/23	33
1/2/23-1/1/24	34
1/2/24-1/1/25	35
1/2/25-1/1/26	36
1/2/26-1/1/27	37

If your date of birth is...	The you need the following number of credits...
1/2/27-1/1/28	38
1/2/28-1/1/29	39
1/2/29 or later	40

Note: If you are a male who turned 62 before 1975, see §203.

205. Deemed fully insured status.

205.1. When are you deemed fully insured?

You are deemed fully insured if you meet the following conditions:

- A. You were at least 55 on January 1, 1984;
- B. You were an employee of a nonprofit (non-covered) employer (see § 931) on January 1, 1984; and
- C. Your employer did not have a waiver certificate (under section 3121(k) of the Internal Revenue Code) in effect on January 1, 1984.

205.2. How do the 1983 amendments affect fully insured status?

You can also obtain **deemed fully insured status** with fewer credits if you were extended Social Security coverage effective January 1, 1984, provided:

- A. Your coverage was extended solely by reason of the 1983 amendments; and
- B. Your credits are earned after 1983.

Note: This provision does not apply if you declined the option to elect coverage, even though a waiver certificate was in effect on January 1, 1984. This condition also does not apply if you are a member of a religious order who has taken a vow of poverty.

205.3. How many credits do you need to be deemed fully insured?

The age and number of credits required for deemed fully insured status is provided in the chart below.

Credits needed - deemed fully insured.

If you were the following age on January 1, 1984,...	Then you need the following number of credits...
60 or over	6
59 or over, but less than 60	8
58 or over, but less than 59	12
57 or over, but less than 58	16
55 or over, but less than 57	20

Note: You may not use credits earned before January 1, 1984, for deemed fully insured status. You may use them in addition to credits earned after 1983 to establish regular fully insured status.

205.4. What World War II veterans are considered to have died fully insured?

Certain World War II veterans who separated from active military service before July 27, 1951, and died within three years of their separation are considered to have died fully insured (see §960).

206. Currently insured status defined.

206.1. When do you have “currently insured status”?

“Currently insured status” may be all that is needed for you to receive some types of benefits (see §211).

A person is currently insured if he or she has at least six quarters of coverage during the full 13-quarter period ending with the calendar quarter in which he or she:

- A. Died;
- B. Most recently became entitled to disability benefits; or
- C. Became entitled to retirement insurance benefits.

206.2. How is the 13-quarter period determined?

Calendar quarters, all or part of which are in an established prior period of disability, are generally not counted. However, the first or last quarter of the prior period may be counted if the quarter is used as a credit. (For exception, see §209.)

DISABILITY INSURED STATUS

207. When do you have disability insured status?

You have disability insured status if you:

- A. Have at least 20 credits during a 40-quarter period (the 20/40 rule);
- B. The 40-quarter period ends with the quarter that you are determined to be disabled; and
- C. You are fully insured in that quarter as explained in §203

208. Special insured status-disabled before age 31.

208.1. What is “special insured status”?

“Special insured status” allows an option to the “20 credits in 40 quarters” provision (20/40 rule). Individuals disabled before age 31 can qualify for disability insurance benefits or establish a period of disability.

208.2. When do you have special insured status?

You meet the special insured status requirements if, in the quarter your disability is determined to have begun or in a later quarter, you:

- A. Have not yet turned 31;
- B. Are fully insured as explained in § 203; and
- C. Have credits in at least one-half of the quarters:
 - 1. During the period beginning with the quarter after the quarter you turned 21; and
 - 2. Ending with the quarter that you became disabled.

The credits **must** be earned in this period. If the number of elapsing quarters is an odd number, the next lower even number is used.

208.3. What is the minimum number of credits you need for special insured status?

You need at least six credits in order to have special insured status. If you became disabled before the quarter you turned 24, you must have six quarters of coverage in the 12-quarter period ending with the quarter your disability began.

208.4. Can you obtain special insured status if you are older than 31?

If you are over 31, you may obtain special insured status if you met the following conditions:

- A. You had a previous period of disability established before you turned 31;

- B. You met and currently meet the special insured requirements (as set out above); and
- C. You currently do not meet the 20/40 rule or fully insured status requirements.

208.5. Are there any special provisions for the blind?

A person disabled because of blindness may qualify for entitlement to disability benefits if he or she is fully insured as explained in §203. Blind workers are not required to meet “20 credits in 40 quarters” or “special insured status” tests.

209. Periods of disability and insured status.

209.1. When is your period of disability NOT counted in determining credits for insured status?

If you have an established period of disability, it is not counted in determining the number of credits you need to be fully or currently insured. It is also not counted when computing your benefit amount. (See §510 for definition of when a period of disability begins and §511 for when it ends.)

209.2. When is your period of disability counted in determining credits for insured status?

Your period of disability is not excluded in computing your (or your survivors') Social Security benefits if including it would be more beneficial for you. For example, your period of disability is counted if you have potential credits in your disability period and if the potential credits would qualify you for another benefit formula that would increase your benefit rate or would give you insured status.

210. Do your credits based on military service before 1957 count toward disability?

Your Social Security credits based on military service before 1957, and certain railroad compensation, may be used to establish a period of disability. However, these credits may or may not be used to pay monthly Social Security benefits. (See §948.)

SUMMARY CHART

211. Summary chart of requirements for insured status.

211.1. What are the requirements for monthly Social Security benefits?

The following chart shows the requirements for receiving the various types of monthly Social Security benefits.

Summary Chart - Insured Status

Monthly Social Security benefits can be paid to...	If the worker...
A retired worker age 62 or over.	Is fully insured.
A disabled worker under age 65.	<p>Would have been fully insured had he or she turned 62 in the month the disability began. The worker also needs 20 credits out of the 40 calendar quarters ending with the quarter that the disability began.</p> <p>Note: This does not apply in the case of a person disabled because of blindness as described in §507.</p>
<p>A worker disabled before age 31 who does not have sufficient credits to meet 20/40 requirement.</p> <p>Note: Special insured status may apply to a worker who becomes disabled after age 31, provided the individual had a period of disability prior to age 31. See §208.</p>	<p>Has credits in one-half of the quarters elapsing in the period after turning 21 and up to and including the quarter of becoming disabled. The worker needs at least six credits (see §206); or if disabled in a quarter before turning 24, he or she needs six credits in the 12 calendar-quarter period immediately before becoming disabled.</p>
Worker disabled due to blindness.	<p>Has at least one credit for each year after turning 21 (or 1950, if later) up to the year the qualifying credit is earned. Must have a minimum of six credits.</p>
<p>The spouse of a person entitled to disability or retirement insurance benefits, if he or she is: (A) Age 62 or over (may be divorced spouse in certain circumstances; see §311); or (B) Caring for a child who is under age 16; or a child under a disability which began before the child reached age 22 and entitled to benefits (see Chapter 3).</p>	<p>Is fully insured or insured for disability benefits, whichever is applicable as shown above.</p>

Monthly Social Security benefits can be paid to...	If the worker...
A dependent, unmarried child of a person entitled to disability or retirement insurance benefits if the child is: (A) Under 18; (B) Under 19 and a full-time elementary or secondary school student; or (C) Age 18 or over and under a disability which began before the child turned 22.	Is insured for retirement or disability benefits, whichever is applicable, as shown above.
A widow(er) (may be surviving divorced spouse in certain circumstances; see §403) age 60 or over.	Is fully insured.
A widow(er) and, under certain conditions, a surviving divorced spouse, if the widow(er), or divorced spouse is caring for a child entitled to benefits if the child is under 16 or disabled.	Is either fully or currently insured.
A disabled widow(er) (may be surviving divorced spouse in certain circumstances; see §403) age 50 or over but under age 60 whose disability began within a certain period (see §513).	Is fully insured.
A dependent, unmarried child of a deceased worker if the child is: (A) Under 18; (B) Under 19 and a full-time elementary or secondary school student; or (C) Age 18 or over and under a disability which began before the child turned 22.	Is either fully or currently insured.
The dependent parents age 62 or over of the deceased worker.	Is fully insured.

211.2. What are the requirements for a special monthly cash benefit?

You can receive a special monthly cash payment if you meet the following requirements:

- A. You are at least 72 years old;
- B. You are not insured for regular Social Security benefits; and
- C. You turned 72 either;
 - 1. Before 1968; or
 - 2. Between 1968 and 1971 and you have at least three credits for each calendar year elapsing after 1966 and before the year you turn 72.

Note: This benefit is not available if you turn 72 after 1971.

211.3. What are the requirements for a lump-sum death payment?

The worker must be either fully or currently insured for a beneficiary to receive a lump-sum death payment. The lump-sum death payment is paid in the following order of priority:

- A. First, to the widow(er) of the deceased worker who was living in the same household as the deceased worker at the time of death;
- B. Second, to the widow(er) (excluding a divorced spouse) who is eligible for or entitled to benefits based on the deceased worker's record for the month of death; and
- C. Third, to children who are eligible for or entitled to benefits based on the deceased worker's record for the month of death.

Note: If there is no surviving widow(er) or child as defined above, no lump-sum is payable.

SOCIAL SECURITY CREDITS

212. Earning Social Security credits.

212.1. How do you earn Social Security credits?

You earn Social Security credits by working at a job covered by Social Security.

212.2. How were credits earned for years before 1978?

To earn credits for the years before 1978, you must have:

- A. Earned at least \$50 in wages for employment covered under the law in any calendar quarter beginning January 1, April 1, July 1, or October 1;

- B. Earned at least \$100 in annual wages paid for agricultural labor for years after 1954 and before 1978; or \$50 in wages paid for agricultural labor in any calendar quarter in 1951 through 1954. (See §214);
- C. Earned at least \$400 in annual net earnings from self-employment in taxable years 1951 through 1977 (see §215); or
- D. Earned the maximum taxable wages for that year. For maximum taxable wages, (see §1301).

212.3. How do you earn credits for years after 1977?

To earn credits for the years after 1977, the Commissioner of the Social Security Administration determines the amount of earnings that will equal a credit for each year. The amount of earnings is determined by using a formula in the Social Security Act that reflects a national percentage increase in average wages. The amount the Commissioner determines is published in the *Federal Register* on or before November 1 of the preceding year.

The table below shows the amount of wages needed to obtain a quarter of coverage:

Wages Needed for a Quarter of Coverage

Year	Amount of wages or self-employment income necessary to obtain a quarter of coverage
1978	\$250
1979	\$260
1980	\$290
1981	\$310
1982	\$340
1983	\$370
1984	\$390
1985	\$410
1986	\$440
1987	\$460
1988	\$470

Year	Amount of wages or self-employment income necessary to obtain a quarter of coverage
1989	\$500
1990	\$520
1991	\$540
1992	\$570
1993	\$590
1994	\$620
1995	\$630
1996	\$640
1997	\$670
1998	\$700
1999	\$740
2000	\$780
2001	\$830

212.4. What is the maximum number of credits you can earn per year?

You may earn a maximum of four credits each year. The credits are based on your total earnings. Total earnings may consist of non-agricultural wages, military wages, railroad compensation, agricultural wages, and self-employment income.

212.5. How is self-employment income assigned?

If self-employment income is not reported on a calendar year basis, it is assigned to each of the calendar quarters in the taxable year. This is done in proportion to the number of months completely included in each year. The month that the taxable year ends is considered to be completely within the taxable year.

212.6. What does “calendar quarter” mean?

The term “calendar quarter” means a period of three calendar months ending March 31, June 30, September 30, or December 31 of any year.

212.7. What do “wages” and “self-employment income” include?

The terms “wages” and “self-employment income” do not necessarily include all of your income from employment or self-employment. They may also include pay for work that is ordinarily covered by the Railroad Retirement Act, and special wage credits for military service. Wages and self-employment income are defined and discussed in Chapter 13 and Chapter 12, respectively.

213. When are calendar quarters NOT counted for determining Social Security credits?

Even if the worker meets the earnings requirement for Social Security credits, he or she cannot earn a credit for a calendar quarter if the calendar quarter:

- A. Begins after the quarter that the worker died;
- B. Has not started yet; or
- C. Is within a prior period of disability that is excluded in figuring benefit rights. (However, the beginning and ending quarters of the prior disability period may be counted as credits if the earnings requirements in §212 are met in these quarters.)

Note: A calendar quarter can only be counted once as a credit.

214. Social Security credits based on wages earned after 1936.

214.1. How are credits assigned for work before 1978?

Credits earned are based on wages earned after 1936 and up to and including the calendar quarter that the worker dies. Before 1978, credit was obtained as of the first day of that quarter. As long as the total wages paid to the worker in that quarter amounted to at least \$50, it does not matter on which date the \$50 total was first reached.

214.2. How are credits assigned for work after 1977?

Under the revised definition of credit in effect after 1977, the number of credits assigned to a calendar year depends on the amount or earnings credited to that year. This is true regardless of the type of earnings credited. If your total earnings for the calendar year equals four times the designated amount reflected on the chart in §212.3, each quarter is a credit.

214.3. How are credits assigned if you earn less than four in a year?

If you earn less than four credits in a year, the credits are assigned to a specific quarter when needed to meet insured status or increase the

amount payable. Credit is effective on the first day of the quarter that it is assigned.

214.4. *How are credits assigned for agricultural work?*

Credit for agricultural wages was obtained in the same manner as non-agricultural wages from 1951 through 1954. From 1955 through 1977, a farm employee acquired credits based on total covered wages paid to him or her for farm work during a calendar year. A farm employee earned one credit for each \$100 in cash wages paid during the year. After 1977, a **farm employee** earns a credit for each designated amount in cash wages paid during the year. (See §212.3.)

Note: Not all cash pay for farm work is “wages” to qualify for credits. (See §901.)

215. Social Security credits based on self-employment.

215.1. *Can you earn credits on self-employment income?*

Beginning after 1950, you can earn credits based on self-employment income earned in taxable years.

215.2. *How are credits assigned on self-employment income earned before 1978?*

Before 1978, four credits were acquired for every taxable year at least \$400 was earned in self-employment income.

Note: A self-employed person with actual net earnings of less than \$400 may still be given credits if gross earnings were at least \$600. He or she also must be eligible to use the “optional method” of reporting earnings. An individual that is not fully insured is considered to have a credit for each \$400 of total wages during 1937-1950 if the person is fully insured based on credits derived under this method plus the credits earned after 1950.

Self-employment income, net earnings from self-employment, and the optional method available to figure net earnings are discussed in Chapter 12.)

215.3. *How are credits assigned on self-employment income earned after 1977?*

After 1977, you acquire one credit for each designated amount of self-employment income (or self-employment income plus wages) wholly or partly in a taxable year. If you earn less than four credits, they will be assigned to your benefit. Self-employment income earned during any taxable year is assigned to calendar quarters in that taxable year as explained in §212.

TOTALIZATION AGREEMENT

216. Totalization-coordination of Social Security systems of the United States and a foreign country.

216.1. Is your work performed in a foreign country taken into account for determining U.S. Social Security benefit eligibility?

If you worked under the social security system of a foreign country, the periods of work may be taken into account toward meeting U.S. insured status requirements for retirement, survivors, and disability insurance programs if:

- A. The security agreement between the U.S. and the foreign country (totalization agreement) (see §107) provides for foreign periods of coverage;
- B. You have at least six credits earned under the U.S. program; and
- C. You would not be insured for benefits without taking the foreign periods into account.

216.2. What happens if you qualify for benefits based on combined coverage?

If you qualify for benefits based on combined coverage, the amount payable is based on your primary insurance amount (see Chapter 7). It is reduced to reflect the fact that foreign coverage was used to make the benefit payable.

CHAPTER 3

CASH RETIREMENT AND AUXILIARY BENEFITS; SPECIAL AGE 72 PAYMENTS

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RETIREMENT INSURANCE BENEFITS

300. Retirement insurance benefits.

300.1. When do monthly cash retirement benefits begin?

You are eligible for monthly cash retirement insurance benefits (also called old-age insurance benefits) when you are age 62 or older and meet the conditions described in §301.

300.2. What additional benefits are available?

Additional monthly benefits, called auxiliary benefits, may be payable to other persons based on your earnings record as follows:

- A. Monthly spouse's insurance benefits (see §§305-322); or
- B. Monthly child's insurance benefits (see §§323-345).

These auxiliary benefits may also be payable on your earnings record if you are entitled to a disability insurance benefit. (See Chapter 5.)

301. Entitlement to retirement insurance benefit.

301.1. When are you entitled to retirement insurance benefits?

You are entitled to retirement insurance benefits if you:

- A. Are at least age 62 throughout your first month of entitlement and are fully insured; and
- B. Have filed an application for retirement insurance benefits.

If you met the requirements in (A) above before the month you filed the application, you may be entitled to retirement insurance benefits back to the first month in which you met those requirements. There are certain limitations, as explained in §1513.

301.2. When Is It NOT Necessary to File an Application?

You do not need to file an application if you are entitled to disability insurance benefits the month before the month you reach retirement age. The disability insurance benefit ends and the retirement insurance benefit begins automatically.

(See §346 for a special monthly cash payment for certain uninsured persons age 72 or older.)

302. Amount of retirement insurance benefit.

302.1. How is your retirement insurance benefit amount computed?

The retirement insurance benefit rate is equal to the primary insurance amount, which is the basis for all benefits. In some cases, a special minimum benefit is provided for some individuals as explained

in §717. These amounts may be increased by a cost-of-living benefit increase.

(See Chapter 7 for the methods of determining your primary insurance amount and for the effect of delayed retirement credits.)

302.2. *Can you receive a reduced benefit before you reach retirement age?*

If you wait until retirement age, you will receive the full retirement insurance benefit rate. However, if you are a worker age 62 to retirement age and otherwise eligible for retirement insurance benefits, you can choose to receive a reduced benefit. If you choose to receive and do receive benefits for one or more months before retirement age:

- A. The benefit rate ordinarily received at retirement age is reduced by a certain percentage for each month you were under retirement age when the benefit began, as explained in §§723-724; and
- B. A reduced benefit rate will continue to be paid after you reach retirement age.

303. *When are retirement benefits NOT payable (or only partly payable)?*

Retirement benefits may **not** be payable or may be payable only in part if you meet any of the conditions below:

- A. You are under retirement age and earn more than the exempt amount (see §1803);
- B. You are over retirement age and work outside the U.S. for more than 45 hours in a month (see §1823);
- C. You are in the U.S. and are neither a citizen nor an alien lawfully present;
- D. You have been deported or removed from the U.S. (see §1841);
- E. You are an alien who is outside the U.S. for more than six calendar months in a row;
- F. You are an alien living in a country where it is not permitted to mail U.S. Government (see §1848);
- G. You have waived the right to benefits because you are a member of a recognized religious group that is opposed insurance. In this situation, you must have been granted exemption from paying the self-employment tax (see §§1128-1129); or
- H. You are confined within the U.S. in a jail, prison, or other penal institution or correctional facility because you have been convicted of a felony.

(The conditions regarding nonpayment of benefits are explained in Chapter 18.)

304. Do your retirement insurance benefits end when you die?

Yes, your benefits end with your death. No retirement insurance benefit is paid for the month of your death. However, survivor benefits may be payable to your survivors beginning with the month of your death unless:

- A. You or your survivor waived the right to benefits because of religious conviction (see §1128); or
- B. You or your survivor has been convicted of certain crimes and sentenced accordingly (see §1837).

SPOUSE'S INSURANCE BENEFIT

305. When is a spouse entitled to spouse's insurance benefits on the worker's Social Security record?

As the spouse of a worker, you are entitled to spouse's insurance benefits if you meet the conditions below:

- A. The worker is entitled to retirement or disability insurance benefits;
- B. You have filed an application for spouse's benefits;
- C. You are not entitled to a retirement or disability insurance benefit based on a primary insurance amount which equals or exceeds one-half the worker's primary insurance amount;
- D. You either:
 - 1. Are age 62 or over; or
 - 2. Have in care a child under age 16 or disabled who is entitled to benefits on the worker's Social Security record; and
- E. You meet one of the following conditions:
 - 1. You have been married to the worker for at least one year just before he or she filed the application for benefits;
 - 2. You are the natural mother or father of the worker's biological son or daughter. This requirement is met if a live child was born to you and the worker. The child need not be living when you apply for benefits;
 - 3. You were entitled or "potentially" entitled to spouse's (including deemed or divorced spouse's), widow(er)'s (including deemed widow(er)'s or surviving divorced spouse's), parent's, or

childhood disability benefits in the month before the month you married the worker. You are “potentially entitled” if you meet all the requirements for entitlement other than filing of an application, and (in the case of spouse's, widow(er)'s, or parent's benefits) attaining the required age; or

4. You were entitled or potentially entitled to a widow(er)'s, parent's, or child's (age 18 or over) annuity under the Railroad Retirement Act in the month before the month you married the worker.

306. Spouse defined.

306.1. What is the definition of “spouse” for Social Security purposes?

You are considered a spouse for Social Security purposes if you meet the conditions in either (A) or (B) below at the time you apply for benefits:

- A. Under applicable law:
 1. You and the worker were validly married; or
 2. You would have the status of a husband or a wife with respect to the taking of intestate personal property;
- B. You entered into a ceremonial marriage with the worker that was invalid under applicable law because of an impediment resulting from a prior marriage or its dissolution; or a defect in the procedure followed in connection with the alleged marriage, provided:
 1. You married the worker in good faith, not knowing of any defect at the time of the marriage;
 2. You were living with the worker in the same household when he or she applied for benefits (unless you were divorced from the worker at the time); and
 3. For benefits payable prior to January 1991, there is no other person who is or was entitled to monthly insurance benefits on the worker's earnings record as his or her spouse and who still has status as the worker's spouse.

306.2. What is “applicable law”?

Applicable law is the law that would be applied by the courts of:

- A. The State where the insured person was domiciled when you filed for benefits; or
- B. The law applied by the District of Columbia if the insured person was not domiciled in any State when you filed for benefits.

307. Common-law marriage.

307.1. What is a “common-law marriage?”

Common-law marriage. A “common-law marriage” is one in which neither a religious nor civil ceremony was held. In certain States, a common-law marriage may be entered into if a man and a woman agree to be married for the rest of their lives. Most States (even those in which a man and woman can not enter into a valid common-law marriage) generally recognize a common-law marriage that has been validly entered into in another State.

307.2. What are the requirements for a valid common-law marriage?

The basic requirements for a valid common-law marriage (in addition to other requirements in some States) are that both parties must:

- A. Be legally capable of contracting a valid marriage with each other;
- B. Contract the marriage in a State that recognizes common-law marriages;
- C. Have the intent to be married;
- D. Consider themselves husband and wife; and
- E. Mutually agree to become husband and wife from that time on.

308. How does a divorce affect your marital status?

A divorce decree has one of three possible effects:

- A. In some States, divorce immediately returns your status to that of a single person, without restriction as to remarriage;
- B. In other States, while you are no longer a husband or wife after the judgment of divorce, State law or the divorce decree prohibits you from remarrying for a certain period; e.g., during a stated waiting period; or
- C. In still other States, the dissolution of your marriage is postponed for a stated period following the judgment of divorce. Sometimes, the parties to the divorce or the court must take additional action to make a divorce final and thereby dissolve the marriage.

309. What is the effect of violating State-imposed restrictions on remarriage?

The status of your remarriage following a divorce is affected under the following conditions:

- A. If you remarry before a judgment or an interlocutory divorce decree that dissolves your prior marriage becomes final, your remarriage is generally void in all States;

- B. A State imposes a restriction against remarriage after a final divorce and you remarry in that State in violation of its restriction, generally that State considers your remarriage void; or
- C. If you remarry in another State, your remarriage is generally considered valid in all States unless:
 - 1. The State where you either obtained the divorce or got remarried denies recognition of a marriage by a party who goes to another State in order to avoid the restrictions; or
 - 2. The State where you got remarried prohibits marriages of residents of other States that would be void if the marriage took place in the your home State.

310. If there are several conflicting marriages, which one is valid?

Your last (most recent) of several conflicting marriages is the one most States presume to be valid. This is provided there is no evidence that your marriage is not valid.

This does not mean that evidence of your most recent marriage is enough to establish the end of your last marriage(s). You must make reasonable efforts to obtain enough evidence and information to permit a determination to be made on the facts. If all the information and evidence supplied still leaves doubt as to whether your last marriage(s) ended, then your most recent marriage will be presumed the valid one.

311. When are you entitled to divorced spouse's insurance benefits?

You are entitled to a divorced spouse's insurance benefits on the worker's Social Security record if:

- A. The worker is entitled to retirement or disability insurance benefits;
- B. You have filed an application for divorced spouse's benefits;
- C. You are not entitled to a retirement or disability insurance benefit based on a primary insurance amount which equals or exceeds one-half the worker's primary insurance amount;
- D. You are age 62 or over;
- E. You are not married; and
- F. You were married to the worker for 10 years before the date the divorce became final.

Note: You are not entitled before age 62 even if you have an entitled child in care.

The divorced spouse of a worker who is not entitled to retirement or disability insurance benefits, but who has reached age 62 and is fully insured, can become independently entitled to benefits on the worker's earnings record. To do so, however, the divorced spouse must meet the requirements in (B)-(F) above and have been divorced from the worker for not less than two years in a row.

CHILD IN-CARE

312. What does having a “child in care” mean?

Having a “child in care” is a basic requirement for some benefits, including spouse's benefits for a spouse under age 62 and for mother's and father's benefits. “In care” means that the mother or father:

- A. Exercising parental control and responsibility for the welfare and care of a child under age 16 or a mentally disabled child age 16 or over; or
- B. Performing personal services for a physically disabled child age 16 or over.

The mother or father may exercise parental control and responsibility or perform personal services alone or together. When the child in care turns 16, the parent may continue to receive benefits if the child is disabled and the parent meets the requirements for having a disabled child in care.

313. What does “parental control and responsibility” mean?

Exercising “parental control and responsibility” means that you:

- A. Display a strong interest in the proper rearing of the child;
- B. Supervise the child's activities;
- C. Participate in the important decisions about the child's physical needs and mental development; and
- D. Measurably control the child's upbringing and development.

This parental responsibility can be exercised directly or indirectly. You may exercise direct control when you and the child are living together. You may exercise indirect control when you instruct the child's custodian (whether an individual or institution) and insure that the instructions are carried out. In any case, you must be doing more than just providing for the child's food and shelter.

314. What does “personal services” mean?

You are considered to be performing “personal services” for a child age 16 and over when:

- A. You perform services regularly; and
- B. The services you perform for the child are in addition to any routine household services normally done by you or any other adult in the household.

Examples of personal services:

- You provide nursing care;
- You feed or dress a physically disabled child;
- You direct or supervise the activities of a physically disabled child who is unable to manage funds or can do so only with help and guidance; and
- Your presence is required by the nature of the child's disability, e.g., epilepsy.

315. When does a parent NOT meet the in-care requirements?

You do not meet the in-care requirements (whether based on “parental control and responsibility” or “personal services”) if:

- A. The child is age 16 or over (unless the child is disabled); or
- B. You and the child are not living together and any of the following conditions are met:
 1. You and your spouse are separated or divorced and you have lost or given up your right to control the child;
 2. You are mentally disabled;
 3. The child was removed from your custody and control by court order;
 4. You have given up the right to custody and control of the child to some other person or agency;
 5. The separation is for a period of more than six months and the child is age 16 or over and physically disabled; or
 6. The child is under the jurisdiction of a court appointed guardian (of the child's person) other than the claimant.

316. Can a parent meet the in-care requirements while temporarily separated from a child?

You can still meet the in-care requirements during a temporary separation if:

- A. The child was in care when you were living together;
- B. The child normally lives with you; and
- C. None of the factors in §315 exists.

317. Can a parent meet the in-care requirements during a separation from a child because of employment?

When your employment is the reason for separation from a child under age 16 and the separation is indefinite or is not expected to end within six months, you may have the child in care if:

- A. You exercise parental responsibility (See §313); and
- B. You make regular and substantial contributions to the child's support.

318. Separation due to child's school attendance.

318.1. Can a parent meet the in-care requirements when separated from a child because of the child's school attendance?

When the child's school attendance is the reason for your separation from a child under age 16, you may have a child in care if:

- A. The child is not under the sole control and jurisdiction of the school; and
- B. The child spends an annual vacation of at least 30 days with you (unless it is not possible for the child to return home during vacation).

318.2. Which parent is considered to have the child in care in the case of a separation?

If you are separated from the child's other parent, you may be found to have a child in care if:

- A. The child normally returns to you during vacations; and
- B. The school authorities look to you when they have a question concerning the child's welfare.

319. Can a parent meet the in-care requirements when separated from a child because of illness?

If your physical illness or disability causes you to be separated from a child under age 16, you may have a child in care if you are:

- A. Supervising the child's activities; and
- B. Participating in the important decisions about the child's physical and mental needs.

SPOUSE'S INSURANCE BENEFIT PAYMENT

320. Spouse's insurance benefit.

320.1. What is your spouse's insurance benefit amount?

As a spouse, your insurance benefit is one-half of the worker's primary insurance amount (see §302).

The benefit paid to you may be less than one-half of the worker's primary insurance amount if:

- A. The "family maximum" applies (see §§731-732 for an explanation of reduction in benefit rates because of this provision);
- B. You are entitled to a retirement, disability, or widow(er)'s insurance benefit that is smaller than your spouse's benefit rate (only the difference between the retirement, disability, or widow(er)'s benefit and the spouse's benefit rate is paid as a spouse's insurance benefit); or
- C. You qualified for a reduced spouse's benefit before retirement age. (See §§723-724 for an explanation of how the reduced rate is figured.)

Note: If you have in care the worker's child under age 16 or disabled, who is entitled to child's insurance benefits, your benefits are not reduced.

320.2. What is the effect of receiving reduced spouse's benefits prior to full retirement age?

If you choose to receive, and are paid, a reduced spouse's benefit for months before full retirement age, you are not entitled to the full spouse's benefit rate upon reaching full retirement age. A reduced benefit rate is payable for as long as you remain entitled to spouse's benefits.

(For possible adjustment at retirement age, see §728.)

320.3. What do you need to know about divorced spouse's benefits?

If you are a divorced spouse, your spouse's benefit is not reduced under (A) above.

If you do not have the worker's entitled child in your care in the first month of your entitlement before full retirement age, your benefit is reduced under (C) above. However, if you have such a child in care in that month, your benefit is not reduced. It remains unreduced even for later months before full retirement age in which no child is in your care.

321. When spouse's insurance benefits not payable

321.1. When are spouse's insurance benefits NOT payable (or only partly payable)?

Your spouse's insurance benefits may not be payable or may be payable only in part if:

- A. Some or all of the worker's retirement insurance benefits are not payable because:
 - 1. The worker is under age 70, works, and earns more than the exempt amount (see §1803);
 - 2. The worker works outside the U.S. for more than 45 hours in a month (see §1823);

If you and the worker have been divorced for at least two continuous years, your monthly benefit is paid without regard to work deductions of the worker. However, effective January 1, 1991, if the worker was entitled to a retirement insurance benefit in the month before the month of divorce. You are exempt from the two-year waiting period;
- B. The worker's disability insurance benefit is not payable because he or she refuses to accept vocational rehabilitation services (This deduction does not apply to an independently entitled divorced spouse; see §311.) You are subject to deductions if you have not been divorced for two years, unless the worker was entitled to the current disability insurance benefit in the month before the month of the divorce. If the worker was entitled in the month before the month of divorce, the two-year period is waived;
- C. You are under age 70, working, and earning more than the exempt amount (see §1803); or you are working outside the U.S. for more than 45 hours in a month (see § 1823);
- D. You are in the U.S. and are neither a citizen nor an alien who is lawfully present;
- E. You are an alien who is outside the U.S. for more than six calendar months in a row;
- F. You are an alien living in a country where it is not permitted to mail U.S. Government checks (see §1848);
- G. The worker has been deported or removed from the U.S. and you are an alien who is outside the U.S. (see §1842);
- H. You or the worker was granted a tax exemption as a member of a religious group opposed to insurance (see §§1128-1129);
- I. The worker is receiving disability insurance benefits that are subject to offset because of the worker's compensation payments

(This deduction does not apply to an independently entitled divorced spouse; see §311.) You are subject to deductions if the worker is receiving disability insurance benefits, is entitled to workers compensation benefits, and you have not been divorced for two years. If the worker was entitled to the current disability insurance benefit in the month before the month of the divorce, the two year waiting period is waived; or

- J. You are under age 62 and:
 - 1. Do not have in care a child of the worker under age 16 or disabled who is entitled to child's benefits; or
 - 2. The child in care is over age 18 and is entitled to childhood disability benefits but has refused to accept vocational rehabilitation services;
- K. You are entitled, on the basis of your own employment, to a governmental pension (Federal, State, or a political subdivision of a State) not covered by Social Security. Your pension must require offset against the Social Security payment and the exceptions in §1836 do not apply;
- L. You are confined within the U.S. in a jail, prison, or other penal institution or correctional facility because you were convicted of a felony;
- M. You were convicted of unruly activities and a court imposed an additional penalty (see §1837);
- N. You do not have a social security number and refuse to apply for one; or
- O. You are in the United States and neither a U.S. citizen nor an alien lawfully present.

321.2. Do you receive your spouse's benefits if you do not have a child in your care?

If you are a spouse age 62 to full retirement age entitled to spouse's benefits because you have a child in care, you are not paid any benefits for the months that the child is not in your care. You may be paid a reduced benefit, however, if you file a "certificate of election" to receive the reduced benefit for those months in which the child is not in your care. (See §729.)

Note: The benefit of a divorced spouse between ages 62 and full retirement age is not subject to deductions for failure to have a child under age 16 or disabled in care. (See §320.)

(The conditions regarding nonpayment or partial payment of benefits are explained in Chapter 18.)

322. When do spouse's or divorced spouse's insurance benefits end?

Spouse's or divorced spouse's insurance benefits end when any of the conditions below are met:

- A. The spouse dies;
- B. The worker dies (in this case the spouse may be entitled to widow(er)'s, mother's, or father's benefits);
- C. The worker's entitlement to disability insurance benefits ends and he or she is not entitled to retirement insurance benefits (unless the divorce spouse meets the requirements for an independently entitled divorced spouse, as explained in §311);
- D. The spouse is under age 62 and there no longer is a child of the worker under age 16 or disabled who is entitled to child's insurance benefits;
- E. The spouse becomes entitled to retirement or disability insurance benefits and his or her primary insurance amount is at least one-half of the worker's primary insurance amount;
- F. The spouse and the worker are divorced, unless:
 - 1. The spouse had already turned 62 when the divorce became final; and
 - 2. The spouse and the worker had been married for 10 years before the date the divorce became final;
- G. The spouse qualified for benefits only under the conditions explained in §306, and one of the following events occurs:
 - 1. The spouse enters into a valid marriage with someone other than the worker;
 - 2. Prior to January 1991, monthly benefits are awarded on the same earnings record to another person who qualifies as the legal spouse of the worker under the conditions in § 306; or
 - 3. Prior to January 1991, the spouse obtains a divorce from the worker;
- H. The spouse qualified for benefits only under the conditions explained in § 306 and later learns that the marriage is invalid;
- I. The divorced spouse marries someone other than the worker. However, the divorced spouse's benefit will not be ended by marrying an individual entitled to divorced spouse's, widow(er)'s, mother's, father's, or parent's monthly benefits, or to an individual age 18 or over who is entitled to childhood disability benefits; or

J. For an independently entitled divorced spouse, the worker is no longer fully insured or he or she marries the worker.

A spouse is not entitled to spouse's insurance benefits for the month in which any one of the above events occurs.

CHILD'S INSURANCE BENEFIT

323. When is a child entitled to child's insurance benefits?

A child is entitled to child's insurance benefits on the Social Security record of a parent if the following conditions are met:

- A. An application for child's insurance benefits is filed;
- B. The child is (or was) dependent upon the parent (see §§333-337);
- C. The child is not married;
- D. The child meets any of the following conditions:
 - 1. Is under age 18;
 - 2. Is age 18-19 and a full-time elementary or secondary school student; or
 - 3. Is age 18 or older and under a disability (which must have begun before age 22) (see §517); and
- E. The parent meets any of the following conditions:
 - 1. Is entitled to disability insurance benefits;
 - 2. Is entitled to retirement insurance benefits;
 - 3. Died and was either fully or currently insured at the time of death.

324. Who is a “child” for Social Security purposes?

The term “child” includes the worker's:

- A. Natural (i.e., biological) legitimate child, or any other child who would have the right under applicable State law to inherit intestate personal property from the worker as a child;
- B. Stepchild, under certain circumstances (see §331);
- C. Legally adopted child (see §329);
- D. Child of invalid ceremonial marriage entered into under the conditions explained in §328;
- E. Natural child, if the worker:
 - 1. Has acknowledged in writing that the child is his or her son or daughter;

2. Has been decreed by a court to be the father or mother of the child;
3. Has been ordered by a court to contribute to the support of the child because the child is his or her son or daughter; or
Note: The court order must be made before the death of the worker.
4. Has been shown to be the child's father or mother by other acceptable evidence and was living with the child or contributing to the child's support when the child's application is filed (in life cases) or when the worker died (in survivor cases); or

F. Grandchild or step-grandchild, under certain circumstances (see § 325).

325. Can a dependent grandchild or step-grandchild be considered the grandparent's child?

A dependent grandchild or step-grandchild of the worker or spouse may qualify for benefits as a “child” if:

- A. The grandchild's natural or adoptive parents are deceased or disabled:
 1. At the time the worker became entitled to retirement or disability insurance benefits or died; or
 2. At the beginning of the worker's period of disability which continued until the worker became entitled to disability or retirement insurance benefits or died; or
- B. The grandchild was legally adopted by the worker's surviving spouse in an adoption decreed by a court of competent jurisdiction within the U.S. The grandchild's natural or adopting parent or stepparent must not have been living in the same household and making regular contributions to the child's support at the time the insured worker died.

Besides meeting the requirement in (A) or (B), the grandchild or step-grandchild must be dependent on the insured as described in § 336.

326. Legitimacy of a child.

326.1. What are the inheritance rights of a child?

A natural legitimate child has inheritance rights in the parents' intestate personal property under the laws of all States. Under the laws of most States, a child born out of wedlock has the status of “child” for the purposes of sharing the intestate personal property of the

natural mother. The child does not have the status of child with regard to the estate of the natural father, unless certain conditions are met.

326.2. *How is legitimacy determined?*

To determine the child's legitimacy, the courts of a State usually look to the law of the State where the parent was living when the child was born. The courts also look to the law of any other State under which the child's status may have been changed. Therefore, even if the State where the parent was living does not recognize the child as legitimate, the child may still be considered legitimate if born in some other State.

326.3. *Is a child from a valid marriage always considered legitimate?*

A child conceived or born during a valid marriage is considered legitimate in all States. This consideration may be overcome, however, under certain conditions. In a controversy over a child's legal status, certain States follow the "Lord Mansfield Rule". Under this rule, neither the testimony of the child's mother, nor the testimony of the man who was her husband at the time the child was conceived or born, can disprove the child's legitimacy.

326.4. *Are children of void marriages legitimate?*

The legitimacy of children of void marriages differs by State. In some States, void marriage statutes do not affect the legitimacy of a child. In other States, it may be necessary for a court of competent jurisdiction to declare the child legitimate.

327. Legitimated children.

327.1. *What rights are available to a legitimated child?*

A child born out of wedlock may inherit the intestate personal property of the natural father if the child is "legitimated" under State law. "Legitimated" means that the child is given the status of a legitimate child under State law.

327.2. *Can a child obtain rights without being legitimated?*

In some States, a child may acquire inheritance rights without being legitimated only if certain acts prescribed by State law are performed; for example, acknowledgment of paternity of the child.

327.3. *What is the effective date of legitimation?*

The effective date of legitimation of a child may be important in determining when a child becomes entitled to Social Security benefits. In most States, a child legitimated after birth is considered legitimate from birth. In other States, such a child is legitimate only from the date of the legitimating act.

328. Can a child NOT meeting the State law test be considered the child of the worker?

A child is deemed to be your “child” even though the State Law Test is not met as described in §326 or §327 if the child is your son or daughter and:

- A. You and the mother or father went through a marriage ceremony that would have resulted in a valid marriage except for an impediment arising:
 - 1. From the lack of dissolution of a previous marriage or otherwise arising out of such a previous marriage or its dissolution; or
 - 2. From a defect in the procedure followed in connection with the supposed marriage; or
- B. One of the conditions set forth in §324 (E) is met.

329. Legally adopted children.

329.1. What is the definition of “legally adopted child”?

A “legally adopted child” of the worker means a child who was legally adopted under the adoption laws of the State or foreign country where the adoption took place.

A child who is legally adopted by the worker's surviving spouse after the worker's death is the worker's legally adopted child as of the date of the worker's death if:

- A. The child was either living with or receiving one-half support from the worker at the time of the worker's death; and
- B. One of the following is met:
 - 1. The worker attempted to adopt the child before his or her death; or
 - 2. The child was adopted by the worker's surviving spouse within two years after the worker's death.

329.2. What is the effective date of an adoption decree?

The effective date of an adoption decree is important in deciding when an adopted child becomes entitled to benefits. In some States, both an interlocutory and final decree of adoption may be issued. In other States, only one decree or order is issued. The effective date of an adoption is determined by the law of the State where the adoption took place.

330. Inheritance rights of adopted children.

330.1. If an adoption has not been completed, can the child still be considered a child of the worker?

In some cases, a worker may die before a contract to adopt a child is executed. In this case, most States consider the child as the child of the worker for the purpose of sharing the intestate personal property of a deceased worker. If so, the child has the status of a child of the worker for Social Security purposes. The child may qualify for benefits as the worker's "equitably adopted child."

330.2. What are the conditions for qualifying as a child if the adoption has not been completed?

Generally, the following conditions must be met:

- A. An expressed or, in some States, implied contract for the worker to adopt the child;
- B. A legal consideration for the worker's promise to adopt;
- C. In some States, a promise to give the child inheritance rights in the worker's personal property;
- D. Surrender of the child to the worker;
- E. Performance by the child under the contract; and
- F. Sufficient lapse of time so that the child could have been legally adopted under applicable State law.

330.3. What documentation must be provided?

All pertinent documents, together with complete and detailed statements of the parties and other persons having knowledge of the facts, setting forth full information about the factors listed above must be submitted. Each case must be handled on an individual basis.

Note: An equitably adopted child must have been living with or receiving contributions from the worker at the applicable time (see §337).

331. Stepchild-stepparent relationship.

331.1. When does a stepchild-stepparent relationship arise?

In general, a stepchild-stepparent relationship arises when you:

- A. Marry the child's natural parent (in general, this must be after the child's birth); or
- B. Marry the child's adopting parent after the adoption.

331.2. What is the effect of your death as a stepparent?

If you die, your stepchild's entitlement to benefits does not end.

331.3. What is the effect of divorce on a stepchild's benefits?

If the you and the child's parent obtain a final divorce in or after July 1996, the child's existing entitlement to stepchild's benefits ends the month after the month in which the divorce becomes final. Once a stepchild is entitled, a divorce ending the parent's marriage (including an invalid ceremonial marriage-see §332) to the stepparent ends the child's benefits if the divorce becomes final in or after July 1996.

331.4. What are the requirements for a stepchild to qualify for benefits?

The benefit requirements for stepchildren are provided below:

- A. If the parent is living, a stepchild must have been a stepchild of the parent of the insured worker for at least one year before filing an application; and
- B. To qualify for survivors benefits, a stepchild must have been the stepchild of the insured worker for at least nine months before the day that the worker died, unless:
 1. The worker and the child's natural or adopting parent were previously married, divorced, and then remarried at the time of the worker's death, and
 2. The nine-month duration-of-relationship requirement was met at the time of the divorce.

Note: If the death of the worker was accidental or occurred in the line of duty while a member of a uniformed service serving on active duty, the nine-month requirement may be considered satisfied; unless the worker could not have been expected to live for nine months at the time of marriage. (See §404 for an explanation of the exception to the nine-month duration-of-marriage requirement.)

(The evidence required to establish the relationships described above is set forth in §§1707-1717.)

332. What is the definition of “stepchild”?

A child is the stepchild of the worker if the parent, or adopting parent, went through a marriage ceremony with the worker (who is not a parent or adopting parent). The marriage ceremony must have resulted in a marriage that would have been valid except for an impediment arising:

- A. From the lack of dissolution of a previous marriage or otherwise arising out of such a previous marriage or its dissolution; or
- B. From a defect in the procedure followed in connection with the supposed marriage.

CHILD'S DEPENDENCY REQUIREMENTS

333. How does a child qualify for benefits?

A child must be dependent upon the worker to qualify for benefits on the worker's Social Security record. The factors that determine whether a child is dependent upon a worker vary, depending upon whether the worker is the natural parent, the legally adopting parent, the stepparent, or the grandparent. The various dependency "tests" are set out in §§334-337.

334. When is a child considered "dependent"?

A child is considered "dependent" upon the worker if:

- A. The child has not been legally adopted by someone other than the worker during the worker's lifetime; and
- B. The child is either of the following:
 - 1. The legitimate child of the worker;
 - 2. A child born out of wedlock who would have the right under applicable State law to inherit intestate property from the worker as a child;
 - 3. The child of a void or voidable marriage;
 - 4. The child of an invalid ceremonial marriage;
 - 5. A deemed child under section 216(h)(3) of the Social Security Act, under certain circumstances (see §324 (E)); or
 - 6. The legally adopted child of the worker adopted before the worker's entitlement to benefits.

Note: A natural or legally adopted child who was legally adopted by someone other than the worker during the worker's lifetime must have been living with or receiving contributions from the worker at the applicable time.

335. When is a child dependent upon a stepparent?

A child is dependent upon a stepparent if the stepparent was contributing at least one-half the child's support at the applicable time (see §337). A stepchild entitled before July 1996 could also meet another requirement that he or she must have been "living with" the worker.

336. When is a child dependent upon a grandparent or step-grandparent?

To be dependent on the worker, a grandchild (or step-grandchild) must have:

- A. Begun living with the worker before the grandchild became 18 years old; and
- B. Lived with the worker in the U.S. and received at least one-half support from the worker:
 - 1. For the year before the month the worker became entitled to retirement or disability insurance benefits or died; or
 - 2. If the worker had a period of disability that lasted until he or she became entitled to benefits or died, for the year immediately before the month in which the period of disability began.

If the grandchild was born during the one-year period, the worker must have lived with and provided at least one-half of the grandchild's support for essentially the entire period from the date of the grandchild's birth to the month indicated in (B) above.

337. When a child must be dependent upon insured parent.

337.1. When must a child be dependent in order to obtain benefits?

In order to receive benefits, the child must have the status of a "child" (see §324). The child must also be dependent or deemed dependent at one of the times set out in (A), (B), (C), or (D) below:

- A. If the worker is entitled to disability insurance benefits the child must be dependent at one of the following points:
 - 1. The beginning of the worker's period of disability;
 - 2. The time the worker last became entitled to disability insurance benefits; or
 - 3. The time the application for child's insurance benefits is filed;
- B. If the worker is entitled to retirement insurance benefits and had a period of disability that did not end before that entitlement, the child must be dependent at one of the following points:
 - 1. The beginning of the worker's period of disability;
 - 2. The time the worker became entitled to disability insurance benefits;
 - 3. The time the worker became entitled to retirement insurance benefits; or
 - 4. The time the application for child's insurance benefits is filed;
- C. If the worker is entitled to retirement insurance benefits not immediately preceded by a period of disability, the child must be dependent at the time the application for child's insurance benefits is filed; or

D. If the worker is deceased, the dependency requirement can be met at the time of the worker's death. If the deceased worker had a period of disability continuing until the month of death or until entitlement to retirement insurance benefits, the requirement can also be met:

1. At the beginning of the worker's period of disability;
2. At the time the worker became entitled to disability insurance benefits; or
3. At the time the worker became entitled to retirement insurance benefits. If the parent was alive and entitled to disability or retirement insurance benefits within the retroactive life of the child's application, dependency can be met within the retroactive period.

Note: If the child is a dependent grandchild or step-grandchild, the use of the points in (A) through (D) of this section is subject to the limitations in §336 (B).

337.2. What are the dependency requirements for a child adopted by the worker after the worker's entitlement?

If the worker adopts a child after becoming entitled to either retirement or disability insurance benefits, the dependency requirement is met only if:

- A. The child is the natural child or the stepchild of the worker; or
- B. The child was legally adopted by the worker in an adoption decreed by a U.S. court; and
 1. The child was under age 18 when adoption proceedings began; or
 2. The child was living with or receiving at least one-half support from the worker for the year immediately before the month that the adoption is decreed.

CHILD'S INSURANCE BENEFIT PAYMENT

338. Amount of child's insurance benefit.

338.1. How is the child's monthly benefit amount determined?

A child's monthly benefit rate is:

- A. One-half the insured parent's primary insurance amount if the parent is entitled to disability or retirement insurance benefits (see §302); or

- B. Three-fourths of the parent's primary insurance amount if the parent is dead.

338.2. When is the child's benefit amount less?

The benefit paid to a child may be less if:

- A. The "family maximum" applies and the benefit rate must be reduced (see §§731-732); or
- B. A disabled "child" is entitled to disability or retirement insurance benefits on his or her own Social Security record. In this case, only the amount by which the child's monthly benefit rate exceeds the retirement or disability insurance benefit is paid as the child's insurance benefit.

(See §§733-737 for the effect of simultaneous entitlement to other Social Security benefits on the child's insurance benefit.)

339. When are child's insurance benefits NOT payable (or only partly payable)?

A child's insurance benefits may not be payable or may be payable only in part if any of the conditions below are met:

- A. Some or all of the parent's retirement insurance benefits are not payable because the parent is under age 70, works, and earns more than the exempt amount (see §1803); or works outside the U.S. for more than 45 hours in a month (see §1823);
- B. The parent's disability insurance benefit is not payable because the parent refuses without good cause to accept vocational rehabilitation services;
- C. The child works and earns over the exempt amount (see §1803) or works outside the U.S. for more than 45 hours in a month (see §1823);
- D. The parent has been deported or removed from the U.S. and the child is an alien who is outside the U.S.(see §1842);
- E. The parent has been deported and the child is an alien who is outside the U.S.;
- F. The child is neither a citizen nor an alien lawfully present in the U.S.;
- G. The child is an alien who is outside the U.S. for more than six calendar months in a row;
- H. The child is an alien living in a country where it is not permitted to mail U.S. Government checks (see §1848);
- I. The parent or child was granted a tax exemption as a member of a religious group opposed to insurance (see §§1128-1129);

- J. The parent is receiving disability insurance benefits which are subject to offset because of workers' compensation payments; or
- K. The child is entitled to childhood disability benefits and:
 - 1. Refuses without good cause to accept vocational rehabilitation services. However, the child's insurance benefit may be payable for all months while the disabled child is still under age 19, if a full-time student, as defined in §344;
 - 2. Is married to a retirement insurance beneficiary whose benefit is not payable because he or she is working; or
 - 3. Is married to a disability insurance beneficiary whose benefit is not payable because of refusal to accept vocational rehabilitation services;
- L. The child is imprisoned within the U.S. as a result of a conviction of a felony; or
Note: The benefit may still be payable if the child is a childhood disability beneficiary and is participating in a rehabilitation program that has been specifically approved for the child by a court of law. It must be expected that the child will be able to engage in substantial work upon release within a reasonable time.
- M. A court imposed an additional penalty upon conviction of the child of subversive activities. (See §1837).

(The provisions regarding nonpayment of benefits are explained in Chapter 18.)

340. Termination of child's insurance benefits.

340.1. When do child's insurance benefit payments end?

A child's insurance benefit payments end when:

- A. The child dies;
- B. The child reaches age 18 and is neither disabled nor a full-time student (For a situation where a student may continue to be entitled to child's benefits, even though he or she has reached age 19, see §342);
- C. The child marries (however, if the child is a childhood disability beneficiary and the marriage is to another Social Security beneficiary, see §1852. If the marriage is either void or subsequently annulled, see §1853); or
- D. The child's parent is no longer entitled to disability insurance benefits, unless the entitlement ended because the insured parent became entitled to retirement insurance benefits or died.

The beneficiary is not entitled to child's insurance benefits for the month in which any of the above events occur. In the case of a disabled child, the child's benefits end with the second month following the month in which he or she is no longer disabled.

340.2. Do benefits of an adopted child end if the adoption is annulled?

If a child is entitled to a child's benefit based on a legal adoption, the benefit ends if the adoption is annulled. Benefits end effective with the month in which the annulment becomes effective.

340.3. Do benefits of a stepchild end in the case of a divorce?

A stepchild's benefits end if the marriage between the worker and the stepchild's parent ends in a divorce. Benefits end effective with the last month for which the stepchild is entitled.

341. Can a child be re-entitled to benefits?

A child whose entitlement ended at age 18 or later may be re-entitled upon filing an application if:

- A. He or she became and remains under a disability which began before age 22; or
- B. He or she is age 18-19 and a full-time elementary or secondary school student; or
- C. He or she was entitled to childhood disability benefits and becomes disabled again within seven years after the prior entitlement to those benefits ended. In addition to the above requirements, the child must not have married since last entitled to benefits, unless the marriage was void or annulled. Re-entitlement is not possible after a marriage that ended by death or divorce.

342. When do benefits end for a child who is attending elementary or secondary school?

If a child is attending elementary or secondary school full time when he or she turns 19 and has not completed the requirements for a secondary school diploma or equivalent certificate, the child's benefits continue through whichever of the following occurs first:

- A. The month he or she completes the course;
- B. The second month after the month the child reaches age 19 (if the school operates on a yearly basis, which is the usual case); or
- C. The last month of the quarter or semester that is in progress when he or she reaches age 19 (if the school operates on a quarterly or

semester basis and requires students to reenroll for each new quarter or semester).

343. What is an “educational institution”?

A school is considered an “educational institution” if it provides elementary or secondary education as determined under the law of the State or other jurisdiction in which it is located.

344. What Does “full-time” mean?

A student is attending an educational institution “full-time” if he or she is carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution. However, a student will not be considered in full-time attendance if:

- A. The student is enrolled in a course of study of less than 13 school weeks' duration;
- B. The student's scheduled attendance is less than 20 hours a week (unless an exception applies);
- C. The student is being paid while attending the educational institution by his or her employer who has requested or required that the student attend the educational institution; or
- D. The student is confined in a jail, prison, or other penal institution or correctional facility because of a felony committed after October 19, 1980.

345. When are benefits paid to a child who is not attending school?

Child's insurance benefits may be paid to a child as a full-time student for a period of four calendar months or less in which the child does not attend school if:

- A. The child was in full-time attendance immediately before the four-month period;
- B. The child has established an intent to continue full-time or actually does attend full-time after the end of the four-month period; and
- C. The period of nonattendance is not due to the child's expulsion or suspension from school.

SPECIAL MONTHLY CASH PAYMENT

346. Special monthly payment at 72.

346.1. Who can receive a special monthly cash payment?

You may be entitled to a special monthly cash payment if you meet the conditions below:

- A. You turned 72 before 1972 (if you turned 72 between 1968 and 1971, you must have earned a specified number of credits (see §211));
- B. You are a resident of one of the 50 States, the Northern Mariana Islands, or the District of Columbia;
- C. You are either:
 - 1. A U.S. citizen; or
 - 2. An alien lawfully admitted to the U.S. and have lived in the U.S. continuously for the five-year period immediately before the month you filed the application;
- D. You have properly filed an application for the special monthly cash payment (see §347); and
- E. You do not qualify for a regular Social Security benefit under the fully insured provision discussed in §202.

The special monthly payment ends with the month before the month you die.

346.2. What is the amount of the benefit?

If you are entitled to the special monthly payment, you will receive a monthly benefit of \$210.60. If your spouse is also entitled to the special monthly payment, he or she will also receive \$210.60. The \$210.60 amount was first payable for December 1999. These amounts may be increased when a cost-of-living increase in benefits is established. (See §719.)

Your special monthly payment amount is reduced by the amount of any periodic benefit under a governmental pension system for which you are eligible. (See §348.)

347. Can special monthly payments be made for the months before the application was filed?

No, you are not entitled to the special monthly payment earlier than the month you filed the application. However, if you filed an application in one of the three months before the month you meet the requirements in §346, you can be paid under this special condition. Aside from these exceptions, the regular rules on applications in

Chapter 15 apply to applications for the special monthly payment at age 72.

348. Special payments and government pensions.

348.1. Are your payments reduced if you are under a governmental pension system?

Yes, your special monthly payment is reduced by the amount of any periodic benefit under a governmental pension system for which you are eligible for that month.

If you are married, your special monthly payment may be reduced if your spouse is eligible for a benefit under a governmental pension system. It does not matter whether you or your spouse is retired and receiving the governmental pension. Eligibility is the controlling factor.

348.2. What payments are considered “periodic benefits”?

A periodic benefit under a governmental pension system means any pension, annuity, or similar payment established by the U.S., a State, any political subdivision of a State, or any wholly owned instrumentality of one or more of these governmental entities. This includes monthly Social Security benefits and railroad retirement annuities and pensions. Lump-sums paid in place of a periodic benefit are also included. However, workers' compensation payments and payments by the Department of Veterans Affairs because of a service-connected disability or a service-connected death are not included.

348.3. What adjustments are made to your benefit payments if you are eligible for a governmental pension?

If you are eligible for a governmental pension, the amount of your pension is subtracted from your special monthly cash payment.

If your spouse is eligible for a governmental pension, but is not entitled to the special payment, your special payment is reduced. The reduction amount, after any reduction for your own governmental pension, is the total amount of any periodic pension for which your spouse is eligible.

If both you and your spouse are entitled to the special payment, each payment is first reduced by the amount of his or her own governmental pension (if any). The payment amount is further reduced by each monthly benefit amount that is more than any periodic pension for which the other spouse is eligible.

CHAPTER 4

SURVIVORS BENEFITS

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GENERAL

400. Benefits payable to survivors of deceased insured worker.

400.1. What cash benefits are paid to you as a survivor of an insured worker?

When the insured worker dies, your cash benefits as an eligible survivor may be paid as follows:

- A. Monthly widow(er)'s insurance benefits (see §§401-409);
- B. Monthly surviving child's insurance benefits (see §§410-414);
- C. Monthly mother's or father's insurance benefits (see §§ 415-420);
- D. Monthly parent's insurance benefits (see §§421-427); and/or
- E. Lump-sum death payment (see §§428-433).

Your benefits rates are figured as a percentage of the deceased worker's primary insurance amount. (See §700.)

400.2. What conditions affect survivor benefits?

The following conditions may affect your benefits as a survivor of an insured worker:

- A. If the deceased worker was insured under the Railroad Retirement Act, your benefits may be payable under that Act rather than under the Social Security Act. (See Chapter 23.);
- B. If you or the insured worker was granted a tax exemption as a member of a religious group, whose members oppose insurance plans such as Social Security, you may not be eligible for survivor benefits. If you are eligible, your benefits may be smaller (See §1128.);
- C. If you were convicted of the felonious and intentional homicide of the worker, you cannot become entitled to monthly benefits or the lump-sum death payment payable on the deceased's Social Security earnings record. (See §1722.); and
- D. If you are a minor convicted of intentionally causing your parent's death, you may be denied survivor benefits on the earnings record of your parent.

(See §1837 and §1847 on how conviction by a court for an offense involving subversive activities and residence in a restricted country affect the payment of benefits.)

WIDOWER'S INSURANCE BENEFITS

401. When is a widow entitled to widow(er)'s insurance benefits?

You are entitled to widow(er)'s insurance benefits on a worker's Social Security record if the following conditions are met:

- A. You are either (1) age 60 or over; or (2) at least age 50 but not age 60 and disabled (as defined in §515) and you meet the disability-related requirements in §513;

Note: A widow(er) age 60-64 and under a disability is entitled to disabled widow(er)'s benefits for Medicare purposes. (See §2402 (B).)

- B. The worker died fully insured;
- C. You are not entitled to a retirement insurance benefit that is equal to or larger than the worker's primary insurance amount;
- D. You have filed an application for widow(er)'s insurance benefits (see §405 for exceptions and see §1511 for completing application forms);
- E. You are not married or your marriage can be disregarded (see § 406 for exceptions); and
- F. **One** of the following conditions is met:
1. You were married to the deceased worker for at least the nine months just before the worker died (see §404 for exceptions);
 2. You are the biological mother or father of the worker's son or daughter (this requirement is met if a live child was born to you and the worker, even if the child did not survive);
 3. You legally adopted the worker's son or daughter during your marriage and before the child reached age 18;
 4. You were married to the worker when you both legally adopted a child under age 18;
 5. The worker legally adopted (as defined in §329) your son or daughter during your marriage and before the child reached age 18; or
 6. In the month before the month you married the deceased worker, you were entitled or potentially entitled to either (1) spouse's, widow(er)'s, father's, mother's, parent's, or childhood disability benefits under the Social Security Act; or (2) widow(er)'s, child's (age 18 or over), or parent's insurance annuity under the Railroad Retirement Act.

Note: You are “potentially entitled” if you meet all requirements for entitlement, other than the filing of an application and attainment of the required age.

402. Widow(er) defined.

402.1. What is the definition of a “widow(er)” for Social Security purposes?

You are considered a widow(er) of the insured person for Social Security purposes if:

- A. Under applicable law, if at the time the insured person died:
 - 1. You and the insured person were validly married; or
 - 2. You would have the status of widow(er) with respect to the distribution of intestate personal property;
 - B. You entered into a ceremonial marriage with the insured person that was invalid under the law, provided that:
 - 1. You married the insured person in good faith, not knowing of any impediment to the marriage;
 - 2. You were living with the insured person in the same household at the time of his or her death;
- Note:** This statement does not apply if you are divorced or if you were receiving spouse's benefits at the time of the insured person's death.
- 3. For periods prior to January 1991, there is no other person who is or was entitled to monthly insurance benefits on the insured person's earnings record and still has the status as a legal widow(er); and
 - 4. The invalid marriage resulted from either (1) a prior marriage or its dissolution; or (2) a defect in the procedure followed in connection with your marriage.

402.2. What does under “applicable law” mean?

Applicable law is either:

- A. The law applied by the courts of the State where the insured person lived at the time he or she died; or
- B. The law applied by the District of Columbia if the insured person was not living in any State at the time of his or her death.

403. Entitlement of a surviving divorced spouse.

403.1. When is a divorced spouse entitled to benefits on the worker's Social Security record?

You are entitled to surviving divorced spouse's insurance benefits on the deceased worker's Social Security record if:

- A. You are either (1) age 60 or over; or (2) at least age 50 but not age 60 and disabled (as defined in §515) and you meet the disability-related requirements in §513;
- B. The worker died fully insured;
- C. You are not married (see §406 for exceptions); and
- D. You meet the requirements in §401 (C) and (D).

403.2. What is a "surviving divorced spouse"?

You are a "surviving divorced spouse" if you were married to the worker for 10 years just before the date the divorce became final. You meet this definition even if you were divorced within the 10-year period, provided you remarried the worker no later than the calendar year after the year of the divorce.

404. Exception to nine-month duration-of-marriage requirement.

404.1. What are the exceptions to the nine-month duration-of-marriage requirement?

The nine-month duration-of-marriage requirement in §401 (F)(1) is waived under any of the following conditions:

- A. The insured person's death was accidental;
- B. The insured person's death occurred in the line of duty while he or she was a member of a uniformed service serving on active duty; or
- C. The widow(er) was either (1) married to the insured person at the time of the insured person's death; or (2) previously married to and divorced from him or her, and the previous marriage had lasted nine months.

Note: The exception to the nine-month duration-of-marriage requirement does not apply if, at the time of the marriage, the insured person could not reasonably have been expected to live for nine months.

404.2. When is a death considered "accidental"?

The insured person's death is defined as accidental only if:

- A. He or she received bodily injuries through violent, external, and accidental means;

- B. The insured worker died within three months after the day that the injuries were received; and
- C. The worker's death was a direct result of the bodily injuries, independent of all other causes.

405. When an application for widow(er)'s insurance benefits not required.

405.1. When are you NOT required to file an application for widow(er)'s benefits?

You do not need to file an application for widow(er)'s benefits if:

- A. You have reached retirement age and you were entitled to spouse's benefits for the month immediately before the month that your spouse died;
- B. You were entitled to father's or mother's benefits for the month immediately before the month you reached retirement age; or
- C. You were: (1) between ages 62 and retirement age at the time your spouse died and (2) entitled to spouse's benefits, but not to disability or retirement benefits. The spouse's benefits are automatically converted to widow(er)'s insurance benefits.

405.2. When must you file a certificate of election?

You must file a certificate of election to become entitled to widow(er)'s benefits if:

- A. You are receiving reduced spouse's (or divorced spouse's) benefits and retirement or disability benefits in the month before the month of the worker's death; and
- B. You are between ages 62 and retirement age in the month of the worker's death.

406. Effect of remarriage.

406.1. Does the remarriage of a widower or surviving divorced spouse affect widow(er)'s benefits?

Your remarriage **after age 60** does not prevent you from becoming entitled to benefits on your prior deceased spouse's Social Security earnings record.

406.2. Does the remarriage of a disabled widower or surviving divorced spouse affect widow(er)'s benefits?

Your remarriage does not prevent you from becoming entitled to benefits on your prior deceased spouse's Social Security earnings records as long as:

- A. Your remarriage occurs after you turn 50; and

B. Your remarriage occurs after you become disabled.

Note: If you remarry **before you turn 50**, you will not be entitled to survivor's benefits, unless the marriage ends.

406.3. *How does remarriage of a widow(er) or a surviving divorced spouse before age 60 affect widow(er)'s benefits?*

If you remarry before age 60, you will not be entitled to survivor's benefits, unless:

- A. Your subsequent marriage ends, whether by death, divorce, or annulment; or
- B. Your marriage occurred after age 50 and you were entitled to benefits as a disabled widow(er) or disabled surviving divorced spouse.

406.4. *How does the termination of a remarriage of a widow(er) or surviving divorced spouse before age 60 affect widow(er)'s benefits?*

If you remarry before you turn 60 and that marriage ends, you may become entitled or re-entitled to benefits on your prior deceased spouse's earnings record. Your benefits begin the month the subsequent marriage ends. If the remarriage was absolutely void or was annulled from the beginning, see §1853.

407. Amount of widow(er)'s insurance benefit.

407.1. *How is the widow(er)'s benefit rate computed?*

The widow(er)'s insurance benefit rate equals 100 percent of the deceased worker's primary insurance amount **plus** any additional amount the deceased worker was entitled to because of delayed retirement credits. (See §720.)

407.2. *When is the benefit rate less?*

Your widow(er)'s insurance benefit payable may be less than what was computed above if any of the conditions below apply:

- A. A reduction is necessary because the "family maximum" applies (this reduction is discussed in §§731-732);
- B. You are also entitled to a smaller retirement insurance or disability insurance benefit (only the difference between the larger widow(er)'s insurance benefit and the other benefit is payable as the widow(er)'s insurance benefit; however, this amount is payable in addition to the other benefit);
- C. You are entitled for months before the month you reach retirement age. See §§723-725 for an explanation of how the reduced rate is computed;

D. You choose to receive and are paid a reduced widow(er)'s benefit for months before you reach retirement age. A reduced benefit rate is payable for as long as you are entitled to widow(er)'s benefits. For a possible adjustment at age 62 and retirement age, see §728;

Note: Entitlement to this reduced rate may result in a reduction in any disability or retirement insurance benefit to which you may later become entitled.

E. You are caring for your deceased spouse's child and:

1. The child is under age 16 or disabled;
2. The child is entitled to child's insurance benefits; and
3. You have not reached retirement age. In this case, your widow(er)'s benefits are not reduced for those months below 75 percent of the deceased spouse's primary insurance amount; or

F. The deceased worker was entitled to a reduced retirement benefit for the month before the month he or she died.

408. When will you NOT receive widow(er)'s insurance benefits?

Widow(er)'s insurance benefits may not be payable for some months if any of the conditions below apply:

- A. You are under age 70, working, and earning more than the annual exempt amount (see §1803);
- B. You are under age 70 and working outside the U.S. for more than 45 hours in a month (see §1823);
- C. You are under age 60 (i.e., entitlement is based on disability), and you refuse, without good cause (see §1834), to accept vocational rehabilitation services;
- D. You are an alien who is outside the U.S. more than six calendar months in a row;
- E. You are an alien who is outside the U.S., and you were deported;
- F. You are entitled to a governmental pension (Federal, State, or a political subdivision of a State not covered by Social Security) based on your own employment and:
 1. The entitlement requires offset against the Social Security payment; and
 2. The exceptions in §1836 do not apply;
- G. You are imprisoned within the U.S. for conviction of a felony, unless you are entitled based on disability;

Note: You must be participating in a rehabilitation program that has been specifically approved for you by a court of law. It must be

expected that you will be able to engage in substantial gainful activity upon your release within a reasonable time.

- H. You do not have a Social Security Number, and you refuse to apply for one; or
- I. You are in the United States, and you are neither a U.S. citizen nor an alien lawfully present.

The conditions regarding nonpayment of benefits are explained in more detail in Chapter 18.

409. Termination of widow(er)'s insurance benefits.

409.1. When do your widow(er)'s benefits end?

Your widow(er)'s insurance benefits end when:

- A. You die;
- B. You become entitled to a retirement insurance benefit that is equal to or larger than the worker's primary insurance amount;
- C. For benefits payable prior to January 1991, you qualified only under the conditions explained in §402 (B) and monthly benefits were awarded on the same earnings record to another individual who either:
 - 1. Validly married the deceased worker; or
 - 2. Has the same status under State law with respect to the taking of intestate personal property as you would as the widow(er); or
- D. Your disability ends. In this case, your last month of entitlement is the second month after the month in which your disability ended. However, your entitlement continues if you reach retirement age on or before the last day of the third month after your disability ends.

You are not entitled to widow(er)'s benefits for the month in which any one of the above events occurs, except as explained in (D).

409.2. Do benefits end or are they reduced upon remarriage?

Your benefits will not terminate or be reduced upon remarriage if:

- A. You are a widow(er) or surviving divorced spouse age 60 or over; or
- B. You are a **disabled** widow(er) or a **disabled** surviving divorced spouse age 50 or over.

See §406 for the effects of remarriage on benefits.

SURVIVING CHILD'S INSURANCE BENEFITS

410. When is a surviving child entitled to child's insurance benefits?

A surviving child is entitled to child's insurance benefits if the conditions below are met:

- A. The worker-parent died either fully or currently insured;
- B. The child is the child of the deceased;
- C. The child is:
 - 1. Under age 18;
 - 2. Under age 19 and a full-time elementary or secondary school student; or
 - 3. Age 18 or over and under a disability as defined in §507.1 (which began before age 22); and
- D. The child was dependent upon the deceased parent (see §§ 334-337 for the dependency "tests");
- E. The child is not married; and
- F. An application for child's insurance benefits is filed. (See §511 for completing application forms.)

Note: An application is not required if the child was entitled to child's insurance benefits on the deceased parent's earnings record for the month before the month in which the parent died.

411. What is the definition of "child" for Social Security purposes?

The term "child" includes the insured worker's:

- A. Natural (e.g., biological) legitimate child, or any other child who would have the right under applicable State law to inherit intestate personal property from the insured worker as his or her child;
Note: Applicable State law is the law applied by the courts of the State where the insured worker was domiciled at the time of death. If the worker was not domiciled in any State, applicable State law is the law of the courts of the District of Columbia.
- B. Stepchild, under certain circumstances (see §331);
- C. Legally adopted child (see §329);
- D. Child of an invalid ceremonial marriage entered into under the conditions explained in §328;
- E. Natural child, provided the insured worker:

1. Has acknowledged in writing that the child is his or her son or daughter;
2. Has been decreed by a court to be the parent of the child;
3. Has been ordered by a court to contribute to the support of the child because the child is his or her son or daughter; or
4. Has been shown to be the child's father or mother by other reasonable evidence. The worker must have lived with the child or contributed to the child's support when the child's application was filed or when the insured worker died; or

F. Dependent grandchild or step-grandchild (see §325).

Note: The court action in (E) above must be made before the worker's death.

412. Amount of surviving child's insurance benefit.

412.1. How is the surviving child's benefit rate computed?

The surviving child's insurance benefit rate is three-fourths (.75) of the deceased parent's primary insurance amount.

412.2. When is the benefit rate less?

The child's insurance benefit may be less than above if the “family maximum” applies and all the benefits on that earnings record have to be reduced.

(See §§730-732 for a discussion of the family maximum. See §§733-737 for the effect of simultaneous entitlement to more than one Social Security benefit.)

413. When are child's insurance benefit NOT payable?

The child's insurance benefit may not be payable for some months if any of the conditions below are met:

- A. The child works and earns more than the yearly exempt amount (see §1803);
- B. The child works outside the U.S. for more than 45 hours in a month (see §1823);
- C. The child is an alien who is outside the U.S. for more than six calendar months in a row;
- D. The insured parent had been deported, and the child is an alien who is outside the U.S.;
- E. The disabled child, age 18 or over, refuses to accept vocational rehabilitation services without good cause;

Note: The child's insurance benefit may be payable for all months while the disabled child is still under age 19, if a full-time student, as defined in §344.

- F. The disabled child, age 18 or over, is married to a retirement insurance beneficiary whose benefit is not payable because of work activity;
- G. The disabled child, age 18 or over, is married to a disability insurance beneficiary whose benefit is not payable because of refusal to accept vocational rehabilitation services without good cause;
- H. The child is confined within the U.S. in a jail, prison, or other penal institution or correctional facility for conviction of a felony;
Note: The benefit may still be payable if the child is participating in a rehabilitation program that has been specifically approved for the child by a court of law. It must be expected that the child will be able to engage in substantial work upon release within a reasonable time.
- I. The child does not have a Social Security Number, and the child or his or her parent, guardian, or person acting on the child's behalf refuses to apply for one; or
- J. The child is in the United States and is neither a U.S. citizen nor an alien lawfully present.

The conditions regarding nonpayment of benefits are discussed in more detail in Chapter 18.

414. When do child's insurance benefits end?

Surviving child's insurance benefits end when any of the conditions below are met:

- A. The child dies;
- B. The child reaches age 18 and is neither under a disability nor a full-time elementary or secondary school student;

Note: Entitlement to childhood disability benefits ends when the child age 18 or older is no longer under a disability that began before age 22. However, benefits may continue if the child is still under age 19 and a full-time elementary or secondary school student. (For a situation where a student may continue to be entitled to child's benefits even though he or she has reached age 19, see §342.)

- C. The child marries;

Note: For exceptions: see §1852 if a disabled child age 18 or over marries another Social Security beneficiary; see §1853 if the

marriage is absolutely void or has been annulled **from the beginning**.

- D. The child's entitlement is based on a legal adoption and the adoption is annulled; or
- E. The child is a stepchild of the worker, and the marriage between the worker and the stepchild's parents ends in divorce.

The effective date of the termination of benefits is the month in which any of the above events occurs. However, a **disabled** child's benefits terminate effective with the second month following the month in which he or she is no longer under a disability. Also, a stepchild's benefits terminate effective with the month after the divorce becomes final.

(See §341 for reentitlement conditions.)

FATHER'S AND MOTHER'S INSURANCE BENEFITS

415. When is a widow(er) entitled to father's or mother's insurance benefits?

As a widow(er), you are entitled to father's or mother's insurance benefits if all of the conditions below are met:

- A. The insured worker died either fully or currently insured;
- B. You have filed an application for father's or mother's insurance benefits;

Note: See §1511 for completing application forms. No application is required if you were entitled to spouse's insurance benefits for the month before the month in which the insured worker died.

- C. You are not entitled to a retirement insurance benefit that is equal to or larger than the amount of the unadjusted father's or mother's insurance benefit;
- D. You have in care a child of the deceased worker under age 16 or disabled who is entitled to child's insurance benefits (see §§312-315 for definition of "in care");
- E. You are not married (see §417);
- F. You are not entitled to widow(er)'s insurance benefits; and
- G. You meet one of the conditions in §401 (F).

416. When is a surviving divorced spouse entitled to father's or mother's insurance benefits?

You are entitled to father's or mother's insurance benefits, as a surviving divorced spouse of a worker who died fully or currently insured, if you meet the following conditions:

- A. Prior to January 1, 1991, you and the worker were validly married under State law (see §402 (A)), but the marriage ended in a final divorce. After January 1, 1991, a marriage based on the requirements in §402 (B) also qualifies;
- B. You filed an application for father's or mother's insurance benefits;
Note: No application is required if you were entitled to spouse's benefits for the month before the month the worker died.
- C. You are not married;
- D. You are not entitled to widow(er)'s insurance benefits, or to a retirement insurance benefit that is equal to or larger than the father's or mother's full benefit;
- E. You have in your care the worker's child who is entitled to child's insurance benefits and:
 - 1. The child is your natural or legally adopted child;
 - 2. The child is entitled to child's insurance benefits on the worker's earnings record; and
 - 3. The child is under age 16 or disabled; and
- F. You meet one of the requirements in §401 (F).

417. Effect of remarriage

417.1. How does remarriage affect father's or mother's insurance benefits?

If you receive father's or mother's benefits, your remarriage will generally end your entitlement. It also prevents any future entitlement to father's or mother's benefits on the prior deceased spouse's Social Security record.

417.2. Can you be entitled if the remarriage ends?

You can be entitled or re-entitled to father's or mother's or surviving divorced father's or mother's benefits if your subsequent marriage ends by death, divorce, or annulment. Entitlement or re-entitlement to father's or mother's benefits begins with the month your subsequent marriage ends.

Note: If your remarriage was absolutely void was annulled **from the beginning**, see §1853.

418. Amount of father's or mother's insurance benefit.

418.1. How is the father's or mother's insurance benefit rate computed?

The father's or mother's insurance benefit rate is equal to three-fourths (.75) of the deceased worker's primary insurance amount.

418.2. When is the benefit rate less?

You father's or mother's insurance benefit amount may be less if either of the conditions below are met:

- A. A reduction is necessary because the family maximum applies (see §§730-732); or
- B. You are also entitled to a smaller retirement or disability insurance benefit. In this case, an amount equal to the difference between the father's or mother's benefit rate and the other benefit rate is payable as the father's or mother's benefit. This is paid in addition to the other benefit.

(For the effect of simultaneous entitlement to other Social Security benefits, see §§733-737.)

419. When are father's or mother's insurance benefits NOT payable?

Father's or mother's insurance benefits may not be payable for some months if any of the conditions below are met:

- A. You work and earn more than the yearly exempt amount (see §1803);
- B. You work outside the U.S. for more than 45 hours in a month (see §1823);
- C. You are an alien who is outside the U.S. for more than six calendar months in a row;
- D. The deceased worker had been deported and you are an alien who is outside the U.S.;
- E. You do not have in care a child of the deceased worker under age 16 or disabled who is entitled to benefits on any Social Security record; or, if you are a surviving divorced father or mother, you do not have in care a child of the deceased worker who is:
 - 1. Your natural or legally adopted child;
 - 2. Under age 16 or disabled; and
 - 3. Entitled to benefits on the deceased worker's record;
- F. You are married to an individual entitled to retirement insurance benefits and those benefits are not payable because of that individual's work activity;
- G. You are married to an individual entitled to disability insurance benefits and those benefits are not payable because the individual either (1) refuses to accept vocational rehabilitation; or (2) is subject to workers' compensation offset;

- H. You are entitled to a governmental pension (Federal, State, or a political subdivision of a State not covered by Social Security) based of your own employment and:
 - 1. The entitlement requires offset against the Social Security payment; and
 - 2. The exceptions in §1836 do not apply;
- I. You are imprisoned within the U.S. for conviction of a felony;
- J. You do not have a Social Security Number and you refuse to apply for one; or
- K. You are in the United States, and you are neither a U.S. citizen nor an alien lawfully present.

The conditions regarding nonpayment of benefits are discussed in more detail in Chapter 18.

420. When do father's or mother's insurance benefits end?

Your father's or mother's insurance benefits end if any of the conditions below are met:

- A. There are no children of the deceased worker under age 16 or disabled who are entitled to a child's insurance benefit;
- B. If you are a surviving divorced father or mother, you have no natural or legally adopted child under age 16 or disabled who is entitled to a child's insurance benefit on the deceased worker's earnings record;
- C. You become entitled to a widow(er)'s insurance benefit;
- D. You die;
- E. You become entitled to retirement insurance benefits in an amount equal to or greater than three-fourths (.75) of the spouse's primary insurance amount;
- F. You marry; or
Note: If you marry a person entitled to retirement, disability, divorced spouse's, widow(er)'s, father's, mother's, parent's, or childhood disability benefits, see §1852. If the subsequent marriage ends, you may be re-entitled (see §417).
- G. For benefits payable before January 1991:
 - 1. You were qualified for benefits only under the conditions explained in §402 (B); and
 - 2. Your monthly benefits are awarded on the same earnings record to another individual who either:
 - a. Is validly married to the worker; or

- b. Has the same status under State law with respect to the taking of intestate personal property as would a widow(er).

You are not entitled to father's or mother's insurance benefits for the month in which any of the terminating events above occur.

PARENT'S INSURANCE BENEFITS

421. When is a parent of a deceased person entitled to parent's benefits?

You are entitled to parent's benefits as a parent of a deceased insured person if the conditions below are met:

- A. The insured person was fully insured at the time of death;
- B. You file an application for parent's benefits (see §1511 for completing application forms);
- C. You have reached age 62;
- D. You are not entitled to a retirement insurance benefit that is equal to or larger than the amount of the unadjusted parent's insurance benefit after any increase to the minimum benefit;
- E. You were receiving at least one-half support from the insured person at the applicable time (see §423);
- F. You filed evidence that the support requirement was met with the Social Security Administration within the required time limit (see §424);
- G. You have not remarried since the insured person's death; and
- H. One of the following conditions is met:
 1. You are a natural parent and would be eligible under the law of the State where the worker lived to share in the intestate personal property of the worker as the worker's parent;
 2. You legally adopted the insured person before he or she turned 16; or
 3. You became the deceased's stepparent by a marriage entered into before the deceased turned 16.

422. Parent defined.

422.1. Who is considered a "parent" for Social Security purposes?

You are considered the parent of the insured person if, under applicable State law, it is found that you have the status of parent with respect to the taking of intestate personal property at the time of the insured person's death.

422.2. What does under “applicable State law” mean?

Applicable State law is either:

- A. The law applied by the courts of the State where the insured person was domiciled at the time he or she died; or
- B. The law applied by the District of Columbia if the insured person was not domiciled in any State at the time of his or her death.

423. When must the support requirement be met?

The support requirement must be met:

- A. At the time that the insured person died; or
- B. At the beginning of a period of disability that was established for the deceased if it continued up until the month that he or she died.

424. When must you file evidence of support?

You must file evidence of support within the two-year period:

- A. After the date of the death of the insured person, if that point is being used; or
- B. After the month in which the insured person had filed an application to establish a period of disability if that point is being used.

You must file evidence of support within the appropriate period, even if you may not be eligible for benefits at that time (e.g., you have not reached retirement age). The time limit may be extended for good cause. (See §1519.)

425. Amount of parent's insurance benefit.

425.1. How is the parent's insurance benefit rate computed?

The parent's insurance benefit rate, if **only one parent is entitled** to benefits, equals to 82 1/2 percent (.825) of the deceased worker's primary insurance amount.

The parent's insurance benefit rate, if **two parents are entitled** to benefits on the same earnings record, equals 75 percent (.75) of the deceased worker's primary insurance amount. Each parent receives this amount.

425.2. When is the benefit rate less?

There is no actuarial reduction of benefits payable for months before you turn 65. However, your benefit payable may be less if any of the conditions below are met:

- A. The “family maximum” is involved (see §§730-732). In this case, all benefits payable on the earnings record may be reduced;

- B. You are entitled to a retirement or disability insurance benefit that is less than the parent's insurance benefit. In this case, only the difference between the amount of the parent's insurance benefit and the other benefit is payable as your insurance benefit.

(For the effect of simultaneous entitlement to other Social Security benefits, see §§733-737.)

426. When are parent's insurance benefits NOT payable?

You parent's insurance benefits may not be payable for some months if:

- A. You are under age 70, working, and earning more than the exempt amount (see §1803);
- B. You work outside the U.S. for more than 45 hours in a month (see §1823);
- C. You are an alien who is outside the U.S. for more than six calendar months in a row;
- D. The worker had been deported, and you are an alien who is outside the U.S.; or
- E. You are imprisoned within the U.S. for conviction of a felony.

The conditions regarding nonpayment of benefits are explained in more detail in Chapter 18.

427. When do parent's insurance benefits end?

Your parent's insurance benefits end if any of the conditions below are met:

- A. You die;
- B. You become entitled to a retirement insurance benefit that is equal to or larger than the amount of the unadjusted parent's insurance benefit; or
- C. You marry.

Note: If the marriage is to a person entitled to monthly Social Security benefits as a divorced spouse, widow(er), mother, father, parent, or a disabled child age 18 or over, see §1852.

If the remarriage was absolutely void or was annulled **from the beginning**, see §1853.

You are not entitled to parent's insurance benefits for the month in which any of the above events occurs.

LUMP-SUM DEATH PAYMENT

428. When is a lump-sum death payment paid?

A lump-sum death payment may be made on the Social Security record of a worker who dies either fully or currently insured. The lump-sum is a one-time payment of \$255 (see §700 for an exception). It is paid in addition to any monthly survivors insurance benefits that are due.

429. When will you NOT receive a lump-sum death payment?

You cannot be paid a lump-sum death payment on the Social Security record of a deceased worker, regardless of his or her insured status, if any of the following conditions are met:

- A. The worker was deported after September 1, 1954, and, at the time of death, was not lawfully readmitted to the U.S. (see §1842 for a discussion of this condition);
- B. The worker could not have been paid a monthly benefit for the month before the month in which he or she died. At that time, the worker was an alien who was outside the U.S. for more than six calendar months in a row (see §1843 for a discussion of this condition);
- C. You were convicted of the felonious homicide of the worker;
- D. The worker was granted a tax exemption as a member of a religious group, which has not ended; or
- E. The Railroad Retirement Board has jurisdiction in the survivor's claim; or has already paid a lump-sum death payment.

430. When is a lump-sum paid to the surviving widow(er)?

You are eligible for the lump-sum death payment based on your relationship with the worker as husband and wife if both of the following conditions are met:

- A. You were living in the same household as the worker when the worker died. This rule also applies when there is an absence; and
- B. You filed an application for the lump-sum within the required time limit (see §§1517-1519).

(See §402 for the definition of a “widow(er).”)

431. When no spouse living in household.

431.1. Who receives the lump-sum death payment if there is no spouse living in the household?

Providing he or she is entitled to or eligible for benefits as a widow(er), mother, or father for the month the worker dies, the lump-sum is payable to a surviving spouse not living with the deceased worker at time of death if:

- A. There is no spouse living in the same household with the worker when he or she died; or
- B. The surviving spouse dies before the lump-sum is paid.

431.2. Who is considered an “eligible” person?

An “eligible” person is one who would have been entitled to benefits had a timely application been filed.

431.3. Can the lump-sum be paid to a divorced spouse?

No, the lump-sum is not payable to a divorced spouse.

431.4. Who receives the lump-sum if there are two surviving spouses?

In rare situations, there may be two surviving spouses (e.g., one meets the requirement in §402 (A)(1) and the other meets the requirement in § 402 (A)(2)). Both spouses may be eligible for the lump-sum, even though neither was living in the same household as the worker when he or she died. In this situation, the lump-sum is equally divided between the spouses.

432. Lump-sum payable to children.

432.1. Can the lump-sum be paid to children?

If there is no spouse to receive the lump-sum death payment, the lump-sum is payable to a child or the children of the deceased worker. The child or children must have been entitled to or eligible for benefits on the deceased's earnings record for the month the worker died.

432.2. How is the lump-sum paid if there is more than one child?

In the case of several children, each child is eligible for an equal share of the lump-sum.

432.3. What happens if one or more eligible children do not apply for the lump-sum?

If one or more of the children choose not to apply, those children who do apply are paid **only their equal share** of the lump-sum. The unpaid balance remains unpaid, unless those children who originally chose not to apply later decide to do so.

433. When application must be filed.

433.1. When must you file the application for the lump-sum?

You must file the application for the lump-sum death payment within the two-year period ending with the second anniversary of the insured person's death. The filing period may be extended under certain conditions as explained in §§1517-1519.

433.2. Who must file an application for the lump-sum payment?

You must file an application for the lump-sum death payment if:

- A. You are **not** entitled to wife's or husband's benefits on the deceased person's Social Security record for the month just before the month in which the insured person died; or
- B. You are a child.

Note: If more than one child is entitled to the lump-sum, **each child** must apply to receive his or her share of the payment.

433.3. When do you NOT need to file an application for the lump-sum?

You do not need to file an application for the lump-sum as a widow(er) if you were entitled to wife's or husband's benefits on the deceased person's Social Security record for the month just before the month in which the insured person died.

CHAPTER 5

CASH DISABILITY BENEFITS AND RELATED DISABILITY PROTECTION

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INTRODUCTION

500. What are the types of disability protection under Social Security?

There are seven types of disability protection included under Social Security:

- A. **Monthly cash benefits for a disabled worker** (see §§501-506) and family. The benefits for the disabled worker are usually called “disability insurance benefits.” However, in this Chapter they are called “disabled worker's benefits.” This is to distinguish them from other benefits for disabled persons.
- B. **Monthly cash benefits for the needy, blind, or disabled individuals.** This includes blind or disabled children (see §2110 for the definition of a child) under the Supplemental Security Income (SSI) program. The evaluation of the disability is discussed in Chapter 6. Other conditions for eligibility are discussed in Chapter 21.
- C. **The establishment of a period of disability for a disabled worker.** This protects against the loss of or the reduction in the disability amount or retirement insurance benefits for the worker or the worker's survivors. The establishment of a period of disability excludes the time that the worker is disabled when determining either insured status or the amount of benefits. This protects the worker since it is likely that the worker does not have substantial earnings when disabled. (See §§508-512.)

The requirements for disabled worker's benefits and for establishing a period of disability are nearly the same. A worker entitled to either one is usually entitled to both.

- D. **Monthly cash benefits for a disabled widow(er) or disabled surviving divorced spouse.** These benefits apply to disabled widow(er)s or disabled surviving divorced spouses age 50-59 who meet the other requirements for entitlement to widow(er)'s insurance benefits. (See §§401-403: the disability-related requirements are explained in §§513-515.) Statements in this Chapter that apply equally to disabled widow(er)s and disabled surviving divorced spouses refer to them simply as “**disabled widow(er)s.**”
- E. **Monthly cash benefits for a disabled son or daughter** of a worker entitled to disabled worker's or retirement benefits or of an insured worker who died. These benefits are payable as early as age 18. They are referred to as **childhood disability benefits** (see

§517) because the son or daughter must have become disabled before reaching age 22. (See Chapter 3 for an explanation of other requirements for entitlement to child's insurance benefits that must be met by a worker's son or daughter.)

F. **Vocational rehabilitation services** for a Social Security disability beneficiary or a SSI disabled or blind recipient. These services are available for beneficiaries who are able to work as long as they are provided with some assistance. The assistance is provided by a State vocational rehabilitation agency, an approved state agency, or an approved non-State vocational rehabilitation program. (See §518.)

G. **Hospital and supplementary medical insurance protection to:**

1. A person under age 65 who has been entitled to either of the following:
 - a. Disability benefits as a disabled worker, widow(er), or adult child; or
 - b. Disabled widow(er) benefits for at least 24 months.

Note: The person must be entitled to benefits on the basis of insured status established under the Social Security Act. This does not include credits earned under the program of any other country.

2. A person who:
 - a. Has chronic kidney failure requiring a regular course of dialysis or a kidney transplant; and
 - b. Is fully insured, currently insured, or entitled to monthly insurance payments because of work covered by the Social Security Act or the Railroad Retirement Act. This includes the spouse or dependent child of a person who is insured or entitled to monthly benefits payable under these Acts.
3. A person whose disability did not end prior to December 1, 1980. The beneficiary may have his or her medical coverage continued for a maximum of 24 months after entitlement ends based on disability, provided medical recovery has not occurred.

Note: After this period, a person may elect to purchase premium Medicare coverage. This is provided he or she continues to have a disabling impairment, files during an enrollment period, and his or her premium-free Medicare coverage ended because of substantial gainful activity.

ENTITLEMENT TO DISABILITY INSURANCE BENEFITS

501. Entitlement to disabled worker's benefits.

501.1. When are you entitled to disabled worker's benefits?

If you are a disabled worker, you are entitled to monthly cash benefits if you meet the following conditions:

- A. Are under a disability as defined in §507;
- B. Have filed an application for disabled worker's benefits (see § 1502 and §1513 for the period during which an application is effective);
- C. Have disability insured status (see §207);
- D. Have completed a five-month waiting period, unless you are exempt from this requirement (see §502); and
- E. Have not turned 65.

Your benefits begin with the first month that you meet all of the conditions above.

501.2. What are “auxiliary benefits”?

“Auxiliary benefits” are additional monthly benefits (see Chapter 3). These benefits may be payable to other family members on your earnings record if you are entitled to disabled worker's benefits. They are payable to your family members even if you are not receiving benefits because of imprisonment. (See §505(E).)

502. Waiting period.

502.1. What is the “waiting period”?

The waiting period consists of five (5) full calendar months in a row. It begins with the earliest full calendar month (not more than 17 months before the month you filed the application) that you:

- A. Were under a disability; and
- B. Had disability insured status for benefit purposes. (See §207.)

You are not entitled to benefits for any month in the waiting period.

502.2. When is the waiting period NOT required?

No waiting period is required if any of the following conditions are met:

- A. You were previously entitled to disabled worker's benefits. These benefits must have ended within five years before the month you again became disabled; or

B. You were previously entitled to a period of disability. These benefits must have ended within five years before the month you again became disabled.

Note: The waiting period requirement does not apply to SSI benefits.

503. Amount of disabled worker's benefit.

503.1. How is the amount of your disabled worker's benefit computed?

Your disabled worker's benefit rate is generally equal to the primary insurance amount. For an explanation of how to figure the disabled worker's benefit amount and regular, reduced, and total family benefits, see Chapter 7.

503.2. When is your benefit rate less?

Your actual disabled worker's benefit rate may be less than the primary insurance amount if any of the conditions below are met:

- A. A reduction becomes necessary because you receive workers' compensation and/or a public disability benefit based on your work relationship paid under a Federal, State, or local public law or plan (see §504); or
- B. You become entitled to disabled worker's benefits after a reduced widow(er)'s or retirement insurance benefit (see §724).

504. Reduction to offset workers' compensation.

504.1. Why are disabled workers' benefits sometimes reduced?

Your SSA disability insurance benefits, (and family benefits based on your earnings record) and/or public disability benefit amount may be reduced to fully or partially offset your worker's compensation benefit. If applicable, the reduction also offsets your disability benefit under a Federal, State, or local public law or plan received for the same month.

504.2. When is the reduction in the benefit made?

A reduction in your disabled worker's benefit may be made for any month before the month you turn 62 or 65. The reduction is made only if the following total benefits payable:

- A. To you and your dependents under the Social Security Act; **plus**
- B. To you as workers' compensation; **plus**
- C. To you as other public disability benefits (if applicable) exceed the higher of:
 - 1. 80 percent of your "average current earnings" before your disability began; or
 - 2. Your family's total Social Security benefit before the reduction.

The offset of benefits continues until you turn either age 62 or 65 depending on your onset of disability and month of entitlement to benefits.

504.3. What is “average current earnings”?

“Average current earnings” is the highest of:

- A. Your average monthly wage upon which your un-indexed disability primary insurance amount is based (see Chapter 7);
- B. Your average monthly earnings from covered employment and self-employment during the highest five years in a row after 1950; or
- C. Your average monthly earnings based on the single calendar year of highest earnings from covered employment. This single calendar year can be the year that your disability began or any of the five years before.

504.4. When are your disabled worker's benefits NOT reduced?

Your disabled worker's benefit is not to be reduced if the workers' compensation law or plan under which you receive your benefit provides for its reduction. The workers' compensation law or plan must be in effect as of February 18, 1981.

504.5. What factors determine the offset and its amount?

Different factors are used to determine whether there is an offset and the amount of the offset. The factors depend on when you became disabled **and** the date you became entitled to benefits:

- A. **Your workers compensation benefits and/or public disability benefits** received under a Federal, State, or local public program are considered in determining the offset amount if:
 - 1. You became disabled after February 1981; and
 - 2. You became entitled to disability benefits after August 1981.
- B. Only **benefits paid as workers' compensation** are considered in determining the amount of the offset if:
 - 1. You became disabled before March 1981; or
 - 2. You became entitled to disabled worker's benefits before September 1981.

Note: The offset of benefits ends when you turn 62 (rather than 65).

504.6. What factors are NOT considered in determining the offset and its amount?

The following are not considered in determining the offset and its amount:

- A. All Department of Veterans Affairs benefits;
- B. Needs-based benefits;
- C. Federal, State, or local disability benefits based on State or local employment, all or almost all of which were covered for Social Security purposes; and
- D. Private pension or private insurance benefits.

504.7. How is the reduction amount computed?

The amount of reduction is the amount paid:

- A. To you and your dependents under the Social Security Act; **plus**
- B. To you as workers compensation; **plus**
- C. To you as other public disability benefits (if applicable) exceed the **higher** of:
 - 1. 80 percent of your “average current earnings” before your disability began; or
 - 2. Your family's total Social Security benefit before the reduction.

The formula above means that your combined payments after the reduction are never less than your total Social Security benefits before the reduction.

504.8. Can your Social Security benefit amount change?

Your amount of Social Security benefits can go up or down based on increases or decreases in your workers' compensation/public disability benefits. In addition, the amount of the reduction can be adjusted from time to time to take into account increases in national earnings levels. In no event does this adjustment decrease the total amount of benefits payable on your earnings record.

504.9. How are lump-sum payments considered when computing the amount of offset?

Sometimes a State Workers' compensation law or a Federal, State, or local public disability benefit law/plan **generally** provides for periodic payments but permits a lump-sum settlement. The lump-sum settlement can be in the form of a commutation or compromise agreement and releases the insurer or the employer from liability. Such a settlement is a substitute for periodic payments and is subject to the offset. In this situation, the lump-sum is prorated to reflect the monthly rate that would have been paid had the lump-sum award not been made. Medical and legal expenses incurred by the worker in connection with the workers' compensation/public disability benefit claim may be excluded from computing the offset.

505. When are your disabled worker's benefits NOT paid?

You do not receive disabled worker's benefits for months during which you meet any of the following conditions:

- A. You are deported or removed from the U.S. under certain provisions of law (see §1841);
- B. You are an alien, and either:
 - 1. Living outside the U.S. for more than six full calendar months in a row (see §1845 for exceptions to this rule); or
 - 2. Residing in a country where payment is prohibited by U.S. Treasury regulations (see §1847 and §1848);
- C. You are entitled to disabled worker's benefits only because you turned 55 and are blind (see §507.4) and you are engaging in substantial gainful activity;
- D. You have refused, without good cause, to accept vocational rehabilitation services available under a State plan approved under Title I of the Rehabilitation Act of 1973;

Note: Good cause for refusing vocational rehabilitation services exists if, for example, you are a member of any recognized church or religious sect that teaches reliance solely upon prayer or spirituality for the treatment of any impairment. Your refusal to accept vocational rehabilitation services is based solely on your belief (see §1834).

- E. You are imprisoned in the United States for conviction of a felony committed at any time;
 - Note:** You may still be eligible for benefits if you are participating in a rehabilitation program that has been specifically approved for you by a court of law. It must be expected that you will be able to engage in substantial gainful activity upon your release within a reasonable time. (See §1850.)
- F. You are engaging in substantial gainful activity following your completion of a trial work period (see §506 and §519), even though you may still have a disability; or
- G. You are living in the United States and you are neither a U.S. citizen nor an alien lawfully present.

506. When do disabled worker's benefits end?

Your last month of entitlement to disabled worker's benefits is generally whichever of the following months occurs first:

- A. The second month after the month your disability ends. However, there are certain conditions under which your benefits may continue; or re-entitlement to benefits may be established after your disability ends:
1. **Benefits for persons in vocational rehabilitation programs.** Your benefits as a disabled worker or a blind (beginning April 1, 1988) and disabled needy individual, participating in a vocational rehabilitation program, may continue until:
 - a. You complete the program; or
 - b. For a specified period of time, if your disability ends before you complete the vocational rehabilitation program.

Note: This condition applies only if you have medically recovered and you began the vocational rehabilitation program before your disability ended. In addition, we must have determined that your continued participation in the vocational rehabilitation program increases the chances that you will be permanently removed from the disability benefit rolls.
 2. **Extended period of eligibility for re-entitlement to benefits following trial work period.** If you continue to have a disabling impairment following the completion of a nine-month trial work period, you receive an extended period of eligibility.

If your disability payments ended because of work activity and your earnings later fall below the level considered substantial gainful activity, your benefits may start again. In this case, you do not need to file a new application.

Note: Effective July 1, 1987, the extended period of eligibility condition no longer applies if you are entitled to supplemental security income disability payments.

Effective January 1, 1988, the law was amended. The re-entitlement period was lengthened from 15 months to 36 months for individuals entitled to benefits for any months January 1988 or later and whose re-entitlement period has not passed as of January 1, 1988.
- B. The month before the month you turn 65. When you turn 65, your benefits are automatically converted to retirement insurance benefits; or
- C. The month before the month you die.

507. Definition of disability for disabled worker's benefits.

507.1. When are you considered “disabled”?

You are considered “disabled” and entitled to disabled worker's benefits if you meet the following conditions:

- A. You cannot engage in any substantial gainful activity (see §603) because of a physical or mental impairment (see §601). You must not only be unable to do your previous work, but also any other type of work considering your age, education, and work experience (see §609);

Note: It does not matter whether such work exists in your immediate area, whether a specific job vacancy exists, or whether you would be hired if you applied for work.

- B. Your impairment(s) is determined medically by a doctor;
- C. It is expected that your impairment(s) can either result in death or last for at least 12 months in a row; and
- D. Your impairment(s) must be the primary reason for your inability to engage in substantial gainful activity.

Note: The definition of disability above also applies to adults (persons age 18 or over) for determining eligibility on the basis of disability under the SSI program.

507.2. Are impairments relating to your commission of a felony covered by disability cash benefits?

Under Title II, if you committed a felony after October 19, 1980, you are not entitled to disability **cash benefits** if:

- A. Your impairments (or the aggravation of preexisting impairments) are related to your commission of the felony; or
- B. Your impairments (or the aggravation of preexisting impairments) are related to your confinement in a correctional facility for the conviction the felony.

507.3. Can a period of disability be established for impairments relating to your commission of a felony?

Although you may not be eligible for cash benefits, your confinement-related impairments and aggravations may be used to **establish a period of disability**. You can apply to have your Social Security records show how long you are disabled. If a period of disability is established, the months in that period of time are not counted in computing your average earnings for any future benefits.

507.4. Is blindness considered a disability?

For Title II, there is a special blindness condition if you are a blind worker who is at least 55. You are considered disabled if the following conditions are met:

- A. You cannot engage in substantial gainful activity because of your blindness; and
- B. Your blindness keeps you from doing work that you previously could do with some regularity and over a substantial period of time.

No benefits are payable for any month that you engage in substantial gainful activity. (See §505(C).)

507.5. What is the definition of “blindness”?

For Social Security purposes, “blindness” is either of the following:

- A. Central visual acuity of 20/200 or less in the better eye with the use of a correcting lens; or
- B. A limitation in the field of vision so that the widest diameter of the visual field subtends an angle of 20 degrees or less (tunnel vision).

Note: The same definition of blindness applies to all applicants for purposes of determining eligibility on the basis of blindness under the SSI program.

507.6. Are impairments relating to drug or alcohol abuse covered by disability benefits?

For both Title II and Title XVI, no individual is considered disabled if drug or alcohol abuse is a contributing factor of disability. This is true regardless of age.

(See §512, §515, and §517, respectively, for definitions of disability relating to establishing a period of disability, establishing entitlement to disabled widow(er)'s benefits, and benefits for a disabled son or daughter age 18 or over.)

(See Chapter 6 for a further explanation of how disability is evaluated.)

PERIOD OF DISABILITY

508. What is a “period of disability”?

For Title II, a “period of disability” is the period of time when you have no earnings (or low earnings) because of your disability. This period of disability is not counted when determining your insured status (§§206-209) and the monthly benefit amount payable to you and your family (see Chapter 7). The period of disability can also preserve your family's rights to benefits in another way: the beginning date of the period of

disability is a point for determining dependency of a child (§333) and a parent (§421).

509. When can you establish a period of disability?

For Title II, you may establish a period of disability if you meet the conditions below:

- A. You file an application either while you are disabled or no later than 12 months after your period of disability ends; (See §511.)
Note: An effective application on behalf of a deceased worker may be filed within three months following the month of the worker's death. It is filed by a person who would be qualified for unpaid monthly benefits (see §1902).
- B. You have disability insured status (see §207);
- C. You were disabled before a final decision was made on your application; and
- D. You were disabled for a period of at least five months in a row before you turned 65 (or you are exempt from serving a waiting period (see §502)).

510. When does your period of disability begin?

For Title II, your period of disability begins:

- A. On the date your disability began, if you have disability insured status (see §207) as of that day; or
- B. On the first day of the first calendar quarter after your disability began and you attain disability insured status.

511. When does your period of disability end?

For Title II, your period of disability generally ends with the last day of the month that the earliest of these events occurs:

- A. The second month after the month your disability ends;
- B. The month before the month you turn 65; or
- C. The month you die.

Note: See §506(A) for the circumstances under which your period of disability may continue after your disability ends. This section also provides the circumstances under which your period of disability may continue if you have completed a trial work period and are performing substantial gainful activity.

512. How is “disability” defined for establishing a period of disability?

There are two definitions of disability for the purpose of establishing a period of disability:

- A. The basic definition used for disabled worker's benefits (see §507.1);
or
- B. "Blindness", as defined in §507.5.

(See Chapter 6 for a further explanation of how disability is evaluated.)

513. When can you receive widow(er)'s benefits based on disability?

You can receive disabled widow(er)'s benefits as a disabled widow(er) or surviving divorced spouse age 50-59 if, effective for benefits payable January 1991 or later, you meet the conditions below:

- A. You meet the definition of disability for disabled workers in §507.1.;
- B. You became disabled no later than seven years after the **latest** of the following months:
 - 1. The month the worker died;
 - 2. The last month you were previously entitled to mother's or father's insurance benefits on the worker's earnings record; or
 - 3. The month your entitlement to widow(er) insurance benefits ended because the disability ended;
- C. You have been disabled throughout a waiting period of five full calendar months in a row; and

Note: No waiting period is required if you were previously entitled to disabled widow(er)'s benefits.

- D. You meet the non-disability requirements for a surviving spouse or a surviving divorced spouse (see Chapter 4).

Note: A widow(er) age 60-64 and under a disability is entitled to disabled widow(er)'s benefits for Medicare purposes; see §2402.

(See §407 concerning the amount of benefits.)

514. When do disabled widow(er)'s benefits begin?

The first month of your entitlement to disabled widow(er)'s benefits is the latest of the following months:

- A. Either of the following months, depending on whether a waiting period is required:
 - 1. **If a waiting period is required**, the sixth consecutive full calendar month of disability; or
 - 2. **If a waiting period is not required**, the first full calendar month of disability;
- B. The month your insured spouse died;
- C. The twelfth month before the month you applied for benefits (see §1513 for retroactivity of application); or

D. The month you turn 50.

(See §409 for when disabled widow(er)'s benefits end.)

515. How is “disability” defined for determining entitlement for disabled widow(er)'s benefits?

For Title II, the definition of “disability” for determining your entitlement to disabled widow(er)'s benefits is the same as that shown for disabled workers in §507.1. This definition applies to disabled widow(er)'s benefits payable January 1991 or later.

(See Chapter 6 for a further explanation of how disability is evaluated.)

Note: The following may not be used to establish disabled widow(er)'s benefits:

- A. Impairments or the aggravation of preexisting impairments related to the commission of a felony after October 19, 1980, for which the you are convicted; or
- B. Impairments or the aggravation of preexisting impairments related to your confinement for committing such a crime.

CHILDHOOD DISABILITY BENEFIT

516. When is a child entitled to SSI disabled child benefits?

A child under 18 is entitled to supplemental security income disabled child benefits if the following conditions are met:

- A. He or she has any medically determinable physical or mental impairment(s) that results in “marked and severe functional limitations;” and
- B. The physical or mental impairment(s) is expected to last for a continuous period of at least 12 months.

No individual under the age of 18 who engages in substantial gainful activity is considered disabled.

Note: “Marked and severe functional limitations” is the standard of disability in the Social Security Act for children claiming SSI benefits. It is a level of severity that meets medically equals or functionally equals the listings. See appendix 1 of subpart P of part 404 for the Listings.

517. Title II childhood disability benefits.

517.1. When are childhood disability benefits payable?

Benefits for your disabled son or daughter age 18 or over (childhood disability benefits) are payable if your son or daughter:

- A. Meets the same definition of disability in §507.1;
- B. Meets the other requirements for child's insurance benefits (see §323);
- C. Is not imprisoned within the U.S. for conviction of a felony (see §1850); and
- D. Has been disabled before turning 22.

(See §340 for events that end these benefits.)

Note: Disabled adult sons or daughters can qualify on the record of a stepparent or grandparent in some cases.

517.2. *When can a disabled child become re-entitled to benefits?*

Your disabled adult son or daughter may be re-entitled to childhood disability benefits if he or she becomes disabled again. The recurrence of the disability must occur within seven years (84 months) of the month in which benefits were terminated because the earlier disability ended. These benefits are payable without a waiting period.

517.3. *Can a disabled child receive SSI payments?*

See §516 for the definition of disability for SSI disabled child payments. See Chapter 21 for other conditions related to eligibility for SSI disabled child payments.

VOCATIONAL REHABILITATION SERVICES

518. Vocational rehabilitation services.

518.1. *What is the purpose of vocational rehabilitation services?*

We often refer applicants for Social Security benefits to a provider of vocational rehabilitation services. These referrals are made so that a maximum number of people who have the potential for achieving productive work may be rehabilitated.

A brochure entitled "*How Social Security Can Help with Vocational Rehabilitation*" (SSA Publication No. 05-10050) provides additional information on this subject.

518.2. *How are vocational rehabilitation services funded?*

Since October 1, 1981, the costs of rehabilitation services have been primarily financed through funds used to administer the basic rehabilitation grants program. In some cases, the service provider receives additional reimbursement for rehabilitation costs. This is done on a case-by-case basis.

TRIAL WORK PERIOD

519. Trial work period.

519.1. What is the purpose of the trial work period?

A trial work period provides an incentive for personal rehabilitation efforts for you as a disabled worker, disabled widow(er), or childhood disability beneficiary (who is still disabled) to return to work. It allows you to perform services in as many as nine months (within a 60-consecutive-month period if nine months of services were not completed before January 1992).

519.2. Does the trial work period affect benefit rights?

If your disability does not improve during the trial work period, your rights to benefits are not affected.

Your trial work period may result in the end of your disability for Social Security purposes. If so, your benefits continue for the month your disability ends and the next two months.

519.3. Does work you do during the trial work period determine the end of your disability?

Any work and earnings during the nine-month trial work period is disregarded in determining whether your disability ended **during** the trial work period. However, work done during or after the trial work period is considered in determining whether your disability ended **after** the trial work period.

519.4. Can your benefits end before the trial work period ends?

The trial work period does not prevent the consideration of any medical evidence that demonstrates your recovery before the ninth-month period. Therefore, it is possible for your benefits to end before the ninth month of trial work.

519.5. How trial work periods are allowed?

Only one trial work period is allowed in any one period of disability. (See §506 for conditions under which an extended period of eligibility occurs after the trial work period.)

519.6. When is your work during the trial work period not counted as a “month of service”?

For calendar year 2001, use the following guidelines to determine if your work during a trial work period does not count as a “month of service” for trial work period purposes:

A. Your earnings from employment are \$530 or less in a month; or

B. Your earnings from self-employment activity are \$530 or less in a month and you spend 80 hours or less in self-employment activity. The dollar amount is adjusted each year based on the national average wage.

520. When are you NOT eligible for a trial work period?

A trial work period is not possible if you meet any of the following conditions:

- A. You are entitled to benefits as a disabled widow(er) and your disability ended before December 1, 1980 (Widow(er)s whose disabilities end after November 30, 1980 are entitled to a trial work period (see §521.);
- B. You are entitled to disabled worker's benefits for which you qualified without a waiting period (§502), provided you were not entitled to benefits after December 1991;
- C. You are a blind disabled worker (under certain circumstances) entitled only under the alternative definition of disability in §507.4);
- D. You are entitled to a period of disability, but not to disability insurance cash benefits (see §500(C)); or
- E. You are entitled to supplemental security income disability payments.

521. Beginning and ending of trial work period.

521.1. When does the trial work period begin?

Your trial work period begins with the month you become entitled to disability benefits. It cannot begin before the month that you file your application for disability benefits.

521.2. When does the trial work period end?

The trial work period ends with the month below that occurs first:

- A. The ninth month (whether or not those nine months are consecutive) in which you perform services (see §519); or
- B. The month in which it is determined that your impairment improves so that you no longer have a disabling condition.

(See §506 for conditions under which an extended period of eligibility occurs after the trial work period.)

BENEFICIARY'S OBLIGATION

522. What events must you report to the Social Security Administration?

As a beneficiary of Social Security benefits based on a disability (or if you have a period of disability), you must notify the Social Security Administration of any of the following events:

- A. An improvement in your disabling condition;
- B. Any change in your work status, such as:
 - 1. Work begins (employment or self-employment);
 - 2. Work stops (employment or self-employment);
 - 3. Work activity increases;
 - 4. Your income increases; or
 - 5. Your disability-related work expenses change or stop.
- C. You apply for payments under a workers' compensation program or, where applicable, a disability program;
- D. There is an increase or decrease in the amount of payment received under a workers' compensation program or, where applicable, a disability program;
- E. You receive a lump-sum settlement under a workers' compensation program or a disability program;
- F. Your workers' compensation and/or public disability payments stop (see §504); or
- G. You are confined within the U.S. for the conviction of a felony.

CHAPTER 6

FACTORS IN EVALUATING DISABILITY

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DISABILITY DETERMINATIONS

600. For whom are disability determinations made?

We make disability determinations for the following individuals:

- A. An insured individual who applies for disability benefits or for a period of disability (as described in Chapter 5);
- B. Widow(er)s and disabled children who qualify because of relationship to an insured worker; and
- C. An individual who qualifies and applies for Supplemental Security Income (SSI) benefits.

This Chapter explains generally how the terms and requirements in Chapter 5 pertain to evaluating disability. It also covers what evidence is needed to determine if an individual is entitled to benefits.

601. What is a “medically determinable” impairment?

A “medically determinable” physical or mental impairment (see §507) is one resulting from anatomical, physiological, or psychological abnormalities. The impairment must be confirmed by medically acceptable clinical and laboratory diagnostic techniques.

602. Impairment lasting or expected to last at least 12 months.

602.1. When do you meet the 12-month disability requirement?

Even if your recovery is expected after the 12-month period, you may still meet the disability requirement that your impairment last for at least 12 months in a row (see §507.1). The 12-month requirement may also be met even if you file the application for disability benefits after you have recovered. This is provided your impairment keeps you from engaging in substantial gainful activity for at least 12 months in a row. (See §509, which describes the application requirements for entitlement to a period of disability.)

602.2. Does the 12-month disability requirement apply to SSI benefits?

The 12-month duration-of-disability requirement also applies in establishing disability for SSI **applicants**.

Note: This requirement does not apply to statutorily blind applicants.

603. Definition of substantial gainful activity.

603.1. What does “substantial gainful activity” mean?

The term “substantial gainful activity” is used to describe a level of work activity and earnings.

“Substantial” work activity involves doing significant physical or mental work, or a combination of both, that are productive.

“Gainful” work activity is either of the following:

- A. Work **performed** for pay or profit;
- B. Work of a nature **generally performed** for pay or profit; or
- C. Work **intended** for profit, whether or not a profit is realized.

603.2. Does work need to be performed on a full-time basis to be considered “substantial”?

For work activity to be substantial, it does not need to be performed on a full-time basis. Work activity performed on a part-time basis may also be substantial. (See §§618-621.)

603.3. Is there a different definition of “substantial gainful activity” for blind people?

A special definition of “substantial gainful activity” applies to individuals disabled by blindness. These individuals are considered to be performing substantial gainful activity if their earnings are higher than the monthly limit that applies to beneficiaries age 65 or over who are receiving retirement benefits (see §1807).

Note: Blind individuals who qualify for SSI benefits are not subject to the substantial gainful activity provision.

604. Independent determination under the Social Security Act.

604.1. How are disability determinations made?

We make **independent** disability determinations. Our decision is based on all of the facts in your individual case.

604.2. Do disability decisions by other agencies affect SSA's determination of disability?

A decision made by another governmental or non-governmental agency that you are or are not disabled is not controlling for the purpose of meeting the disability requirements of the Social Security Act.

604.3. Do disability decisions by a treating source affect SSA's determination of disability?

A statement by an expert treating your impairment regarding the nature of its severity is controlling if:

- A. It is well supported by medically acceptable clinical and laboratory diagnostic techniques; and
- B. It is consistent with other evidence in your file.

604.4. *What if the statement by a treating source is NOT controlling?*

If the statement by your treating source is not controlling, the weight we give to the statement depends on the following:

- A. The extent to which it is supported by clinical and laboratory findings;
- B. The extent to which it is consistent with other evidence as to the severity and probable duration of your impairment(s);
- C. The examining and treatment relationship;
- D. The specialization of the treating source; and
- E. Any other relevant factors.

605. Does SSA make disability determinations on a rating schedule?

We do not make disability determinations on a rating schedule. You are either disabled or not disabled. There is no “percentage of disability” caused by a given impairment.

MEDICAL EVIDENCE

606. Medical evidence as basis for decision of “not disabled.”

606.1. *When does medical evidence establish that you are not disabled?*

The medical evidence in your case may establish that you are not disabled if your impairment(s) is not severe. Your impairment(s) is not severe if it does not significantly limit your physical or mental ability to perform basic work activities, such as: sitting, standing, walking, lifting, carrying, handling, reaching, pushing, pulling, climbing, stooping, crouching, seeing, hearing, speaking; understanding, carrying out, and remembering simple instructions; using judgment; responding appropriately to supervision, co-workers, and usual work situations; and dealing with changes in a routine work setting.

606.2. *When is a child considered NOT disabled for SSI disabled child benefits?*

In the case of SSI disabled child payments, a child is not considered disabled if medical and other evidence shows that the child's

impairment(s) is only a slight abnormality. Slight abnormalities cause no more than minimal limitations.

607. Medical evidence as basis for decision of “disabled”, Listing of Impairments.

607.1. When is medical evidence alone enough to establish your disability?

Medical evidence alone may establish that you are disabled (this includes children under age 18) if:

- A. The evidence shows that you have an impairment included in the Listing of Impairments; or
- B. The evidence shows you have an impairment that is medically the same as a listed impairment.

You must not be engaged in any substantial gainful activity.

607.2. Is the diagnosis of an impairment on the Listing enough to establish your disability?

A diagnosis alone does not meet the guidelines of the Listing just because it has the same name as a listed impairment. To be considered a listed impairment, it must have the symptoms, clinical signs, and laboratory findings specified in the Listing.

Note: Statutorily blind people do not need to show the inability to engage in substantial gainful activity to establish a period of disability (see §617).

607.3. How is the Listing of Impairments used to establish a disability?

The Listing of Impairments is set out in our regulations. We use the Listing to determine if an impairment is disabling. The Listing contains examples of common impairments for each of the major body systems that are severe enough to keep a person from doing any gainful activity. In the case of a child, the Listing gives examples of impairments that cause marked and severe functional limitations. Many of the listed impairments are permanent, expected to last at least 12 months, or expected to result in death. For impairments not on this Listing, the evidence must show that an impairment has lasted or is expected to last for at least 12 months in a row.

DISABILITY EVALUATION

608. What factors, other than impairment, are considered in determining if you are disabled?

Evaluation of your disability application for disabled worker's benefits, adult SSI disability payments, childhood disability benefits, or a "period of disability" considers all facts in your case. We give primary consideration to the severity of your impairment. However, if you have a condition that is neither a listed impairment (see §607), nor is determined to be the medical equivalent of one, you may be disabled under the definition in §507.1. We also consider if your impairment prevents you from performing your past relevant work, and any other work considering your impairment, age, education, and work experience.

Note: An application for SSI disabled child payments is denied if the child's condition(s):

- A. Is not severe, i.e., it causes no more than a minimal limitation in the child's ability to function; or
- B. Does not meet, or medically equal, or functionally equal the listings. If you are eligible for SSI based on disability in the month before the month you turn 18, we must redetermine your eligibility using the adult rules when you turn 18.

609. Evaluation considering age, education, and work experience.

609.1. How are your age, education, and work experience considered when making a disability determination?

We consider age, education, and work experience collectively when making a disability determination. Two special provisions may establish disability if you are unable to perform any of your past relevant work:

- A. A finding of disability may be made if you meet all of the conditions below:
 - 1. You have long-time work experience (at least 35 years) limited to strenuous, unskilled, physical labor;
 - 2. You have a sixth grade or less education;
 - 3. You have a significant impairment that prevents you from performing your previous kind of work; and
 - 4. You have not shown an ability to do lighter work.

B. A finding of disability may also be made if you meet all of the conditions below:

1. You have no past relevant work;
2. You are at least 55 years old;
3. You have less than a high school education; and
4. You have an impairment that is more than “not severe” (see §606).

609.2. *Does your age affect disability determinations?*

Younger and more educated workers than those described above may not be considered disabled, considering age, education, and work experience.

609.3. *Is unemployment due to advancing age enough to show your inability to do substantial gainful activity?*

Your advanced age may affect your capacity to work in competition with others. However, unemployment due mainly to age does not show that you are unable to engage in substantial gainful activity due to a medical impairment. This is true even if you feel that you are not hired solely on the basis of your age.

609.4. *Is lack of an education enough to show your inability to do substantial gainful activity?*

A formal education and work experience affect your ability to work. They also affect your ability to adapt to a new kind of job if you have an impairment that prevents performance of past work. However, a lack of formal schooling (or limited formal education) does not necessarily show your inability to do or adjust to skilled work. For example, the duties of your previous work may establish your ability to do skilled work. Your previous work tasks may also show your ability to transfer your skills to other jobs that are within your remaining ability.

610. What does “work that exists in the national economy” mean?

“Work that exists in the national economy” is work for which there are significant number of jobs. The jobs exist either in the region where you live or in several regions of the country.

611. Does your employment condition affect a disability determination?

Your impairment must be the main reason that you cannot work. You are not considered disabled as defined in §507.1 if your remaining ability and work experience make it possible for you to do work that

exists in the national economy. This is true even if you are unemployed because of any of the following:

- A. Inability to get work;
- B. Lack of work in local area;
- C. Hiring practices of employers;
- D. Technological changes in the industry in which you worked;
- E. Cyclical economic conditions;
- F. No job openings;
- G. Not actually being hired to do work you could otherwise do; or
- H. Not wanting to do a particular type of work.

612. How is disability defined for disabled widow(er)s?

Prior to January 1, 1991, your disability is based on a medically determinable physical or mental impairment that is severe enough to keep you from engaging in any gainful activity. This is true regardless of your age, education, and work experience. Meeting or equaling the level of severity described in the Listing of Impairments is enough to determine that you are disabled.

After January 1, 1991, disability is defined the same as for disabled workers.

EVIDENCE OF DISABILITY

613. Are you considered disabled if you are receiving treatment for an impairment?

If your impairment requires a prescribed treatment that is expected to restore your ability to work, you may or may not be found disabled. You may be considered disabled if, despite treatment, your impairment meets the severity requirement and is expected to last 12 months. You are not considered disabled if you refuse treatment without justification.

614. Evidence of disability.

614.1. Who is responsible for providing evidence of disability?

It is your responsibility as the claimant to provide evidence of disability.

614.2. What evidence must you submit with the application?

You or an individual filing the application on your behalf may be asked to provide the following:

- A. Names and addresses of doctors and medical treatment facilities;
- B. Dates of treatment and any other information that may relate to the supposed disability;
- C. Any sources of medical evidence supporting the supposed disability;
- D. Information relating to education, work experience, and daily activities both before and after the supposed onset of disability; and
- E. Any other pertinent facts showing the effects of the impairment on the ability to perform work-related functions.

614.3. What responsibility does SSA have in gathering evidence for disability determinations?

We pay the reasonable cost for existing medical evidence from any non-Federal hospital, clinic, laboratory, or other provider of medical services, if we request it and it is required for determination. If you have not received medical attention and/or evidence is not available, we are responsible for costs relating to gathering such evidence. This includes necessary transportation costs.

614.4. What types of evidence do you need to provide if you are filing for SSI for a child?

In an SSI child case, the evidence we may consider includes:

- Medical evidence;
- School records;
- Information from people who can tell us about the child's functioning on a day-to-day basis, such as parents, other caregivers, early intervention programs, preschool and school teachers; and
- Any information you can give us about the sources of information described here will help us evaluate the child's case.

A parent, guardian, or other individual applying for SSI disabled child payments on behalf of a child under age 18 is ordinarily required to furnish information about the child. This may include the following:

- A. Names and addresses of day-care providers, schools, or other facilities that would have information about the child;
- B. Information relating to the child's achievement of developmental milestones;
- C. Information relating to the child's ability to engage in age-appropriate activities of daily living in self-care, play, recreation, school and academics, peer relationships, and family life; and
- D. Any other pertinent facts showing the effect of the child's impairment(s) on his or her growth, development, and maturation.

615. What should medical evidence include?

The medical evidence of your mental or physical impairment should include:

- A. **A report** from a licensed physician; licensed osteopath; licensed or certified psychologist, including licensed or certified school psychologists for mental retardation and learning disabilities; licensed podiatrists for impairment(s) of the foot, or foot and ankle, as delineated in the state licensure;
- B. A copy of, or abstract from, the **medical records** of a hospital, clinic, medical institution, sanatorium, or other health care facility;
- C. **Clinical findings** (such as the medical history, physical or mental status examinations or both), laboratory findings, diagnosis, and treatment prescribed with response and prognosis. In cases involving visual impairments, the measurement of visual acuity and visual fields reported by a licensed optometrist may be used:
 - 1. **For adults**, the evidence should also describe the ability to perform work-related functions such as sitting, standing, or moving about, lifting, carrying, traveling, handling objects, hearing or speaking, and, in cases of mental impairment, the ability to reason or make occupational, personal, or social adjustments.
Note: This evidence is not needed in blindness claims.
 - 2. **For an SSI disabled child**, the medical sources opinion about the child's functional limitations compared to children the same age who do not have impairments in acquiring and using information: attending and completing tasks, interacting and relating with others, moving about and manipulating objects, caring for yourself, and health and physical well-being.

616. Consultative examinations.

616.1. When do you need a consultative examination?

We may require a consultative examination in situations including, but not limited to, the following:

- A. To gather more evidence because the evidence obtained is not enough to make a disability decision;
- B. To obtain more detailed medical findings about the your impairment(s);
- C. To obtain technical or specialized medical information;
- D. To resolve conflicts or differences in medical findings in the evidence already in file; or

E. To resolve the issue of your ability to engage in substantial gainful activity.

Consultative examinations are at our expense.

616.2. *Who administers the consultative examination?*

We prefer that you obtain the consultative examination from your treating source. Another source may be an independent consultant used by us to perform such examinations. In some situations, we pay travel expenses relating to a medical examination required in connection with a disability determination.

616.3. *What happens if you refuse a consultative examination?*

If you refuse a consultative examination without good cause, we make a decision based only on the evidence in your file.

SUBSTANTIAL GAINFUL ACTIVITY

617. Importance of substantial gainful activity.

617.1. *Does the ability to do substantial gainful activity mean that you are not considered disabled?*

If there is evidence of your ability to do substantial gainful activity, you are not eligible for disability benefits. This is true even if your impairment is as severe as, or even more severe than, those in the Listing of Impairments. (See §607.)

617.2. *Does the ability to do substantial gainful activity apply to all types of disability protection?*

You do not receive disability benefits if you can engage in substantial gainful activity, unless you meet one of two exceptions:

- A. **A statutorily blind worker age 55 or over**-Evidence of an ability to engage in non-similar substantial gainful activity does not prevent a finding of disability for either entitlement to benefits or establishment of a period of disability. However, disabled worker's benefits are not payable for months of actual engagement in substantial gainful activity. (See §505.)
- B. **A statutorily blind applicant for SSI benefits**- Evidence of an ability to engage in substantial gainful activity does not prevent a finding of blindness. However, earnings are considered under the income and resources provisions. (See §§2128-2166.) This provision also applies to children under age 18.

618. When does your work performance show the ability to perform substantial gainful activity?

Doing work during your supposed disability may indicate your ability to engage in substantial gainful activity in the following ways:

- A. Work that is not gainful activity in itself may indicate that you are capable of increased effort. It may also show that you are able to use greater work skills or abilities;
- B. The performance of duties involving skills, experience, or showing a substantial contribution to a business may indicate your ability to engage in substantial gainful activity; and
- C. The satisfactory performance of work or an assignment may show your ability to engage in substantial gainful activity. Poor performance or the need for close supervision or help could be evidence of your inability to do so.

Note: If you have not shown by work that you are able to engage in substantial gainful activity, we consider all the medical and vocational evidence in your file to determine whether you have the ability to do so. In the case of a child under age 18 filing for SSI childhood disability benefits, we consider the ability to independently, appropriately, and effectively engage in age-appropriate activities.

619. “Make work.”

619.1. What is “make work”?

“Make work” is work involving minimal or insignificant duties. This type of work makes little or no demand on you and contributes little or nothing to the employer or your business (if self-employed).

619.2. Does doing make work show your ability to engage in substantial gainful activity?

Your performance of “make work” does not show that you are able to engage in substantial gainful activity.

620. Significance of earnings.

620.1. Does the amount of your earnings affect whether or not you can do substantial gainful activity?

Your earnings amount during a period of alleged disability may establish your ability to engage in substantial gainful activity. Substantial earnings generally do so. However, low or no earnings during a period of work activity do not establish your inability to engage in substantial gainful activity. The circumstances under which work is performed are considered.

620.2. What if you must stop working because of the impairment?

If you must stop working after a short time because your impairment gets worse or prevents you from working, your earnings do not demonstrate your ability to engage in substantial gainful activity.

620.3. Does your work in a “sheltered” establishment affect whether or not you can do substantial gainful activity?

If you work under special conditions (e.g., in a sheltered workshop) only the earnings relating to your own efforts are considered. Subsidies based on financial need or other non-work factors are not considered. The fact that a “sheltered” establishment operates at a deficit or receives charitable or governmental aid is not material.

620.4. Can the costs of impairment-related items and services be deducted from your earnings?

The cost of certain impairment-related items and services (e.g., certain attendant care services, medical devices and equipment, prostheses, and similar items and services that are necessary to control your disabling condition) that you pay for and need in order to work are deductible from earnings. The significant factor is the relationship between your work productivity and payment.

620.5. Are there any earnings criteria that indicate whether or not you are doing substantial gainful activity?

Certain earnings criteria have been established as reasonable indications of whether you are engaging in substantial gainful activity. Earnings after 1989 as an employee averaging:

- A. Over \$700 a month ordinarily show that you are engaged in substantial gainful activity;
- B. Less than \$300 a month ordinarily show that you have not engaged in substantial gainful activity; and
- C. Between \$300 and \$500 a month require that consideration is given to all circumstances related to your work activity.

Note: Earnings of \$500 a month or less in a **sheltered workshop** or similar facility ordinarily demonstrates that you have not engaged in substantial gainful activity.

(See §603.3 for the special definition of substantial gainful activity applicable to disabled blind individuals.)

621. How are your earnings as a self-employed person considered for determining substantial gainful activity?

Your actual earnings as a non-blind self-employed worker may be given less weight in determining your ability to engage in substantial gainful activity than the extent of your activities in the business. This is so because earnings or losses from your business may be due to factors other than work activities. For example, your business may have only a small profit or may operate at a loss, even if your work is enough to be considered substantial and gainful.

(See §603.3 for the special definition of substantial gainful activity applicable to disabled blind individuals.)

DISABILITY STATUS CEASES

622. When are continuing disability reviews conducted?

We may conduct a continuing disability review from time to time to determine if your disability continues. Some situations warranting a continuing disability review are the following:

- A. Occurrence of the date of a scheduled medical reexamination, in cases where your impairment is expected to improve or where improvement is possible;
- B. Voluntary reports received from beneficiaries indicating medical improvement or return to work;
- C. Substantial earnings posted to a beneficiary's employment record; or
- D. A report of medical improvement received from a vocational rehabilitation agency.

623. When does disability end?

Your disability ends when:

- A. There has been a medical improvement in your impairment(s) relating to your ability to work; **and**
- B. The impairment does not meet or equal a current listing in the Listing of Impairments; **and**
- C. You are not currently disabled; **or**
- D. One of the following conditions exists:
 - 1. One of certain exceptions to medical improvement applies **and** your impairment(s) considered together with your age, education, and work experience (see §609) does not prevent you from engaging in substantial gainful activity (see §603);

2. Subject to the trial-work period provisions (see §§ 519-521), you demonstrate the ability to engage in substantial gainful activity by working (see §603) (See §617 for exceptions.);
Note: In SSI cases, disability does not end on this basis.
3. You do not cooperate with us (e.g., you refuse to give us needed medical or other evidence);
4. We cannot find you (e.g., a question of whether you are still disabled needs to be resolved); or
5. You fail to follow prescribed treatment that could restore your ability to engage in substantial gainful activity.

CHAPTER 7

FIGURING THE CASH BENEFIT RATE

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PRIMARY INSURANCE AMOUNT (PIA) — GENERAL

700. Primary Insurance Amount (PIA) as basic figure.

In this Chapter, “first eligibility” means the year when you reach age 62 or when you begin a period of disability. “Entitlement” means that an individual meets all of the requirements for receiving benefits. This includes the filing of an application.

700.1. How do you figure your cash benefits?

The Primary Insurance Amount (PIA) is the figure used to determine almost all of your cash benefit amounts. These benefit amounts include your monthly benefits as a worker and benefits for your dependents and survivors. The PIA is based on your taxable earnings (see §713) averaged over the number of years you worked. This produces a monthly benefit that partially replaces the loss of your income because of retirement, disability, or death. The lump-sum death payment (see §428) is \$255; however, it may be less if your PIA was computed under a totalization agreement. (See §107.) The only cash benefit not based on the PIA is the special monthly payment made to uninsured persons age 72 or over discussed in §346.

700.2. How does SSA determine your average earnings?

There are generally two methods for determining average earnings. The method we use depends upon when you are first eligible or when you die:

- A. First eligibility or death before 1979; or
- B. First eligibility or death before age 62 in 1979 or later.

700.3. What is the PIA based on under “first eligibility or death prior to 1979”?

We base your PIA on your Average Monthly Earnings (AME). We use the actual earnings reported by your employers or reported by you as a self-employed worker. This method may also apply in limited circumstances for individuals whose first eligibility is after 1978 as defined in §706.2.

700.4. What is the PIA based on under “first eligibility or death before age 62 in 1979 or later”?

We base your PIA on the Average Indexed Monthly Earnings (AIME). We index your earnings from 1951, including the second year before the year of your first eligibility or death, whichever comes first. Indexed means that your earnings are adjusted to put them in proportion to the earnings level of all workers for those years. Your actual reported earnings are used to compute the AIME for the years beginning with the year before your first year of eligibility.

This example shows how to calculate the PIA for an individual retiring at age 65 in the year 2000. Assume Mr. Francis retires at age 65 in 2000. The significant year for setting the index factor is 1995, which is the second year before the year in which he reached age 62. Average wages of all wage earners in 1995 are compared to average wages of all wage earners in each year after 1950. If Mr. Francis' earnings were \$3,000 in 1951 and the wages of all wage earners in 1995 were 8.8160978 times higher than the average wages of all wage earners in 1951, (the index 1951 factor is 8.8160978). Therefore, the 1951 indexed earnings for Mr. Francis are \$26,536.72 ($\$3,000 \times 8.8260978$). Index factors apply for each year to be indexed, depending on the ratio of average wage levels for all wage earners in each year compared to 1995. It is equally true that a different year of attainment of age 62 would change the index factors. In Mr. Francis' situation, earnings in years beginning with 1991 will not be indexed but will be the actual amounts reported.

700.5. *What if a worker dies before reaching age 62 in 1979 or later?*

If an insured worker dies before age 62, his or her earnings are indexed differently to compute the PIA on which widow(er)'s benefits are based, if this results in a higher benefit. In this case, the worker's earnings are indexed up to and including the earlier of the following:

- A. The year in which the worker reaches age 60; or
- B. The second year before the widow(er) becomes eligible, but never earlier than the second year before the worker died.

700.6. *Why are adjusted earnings used instead of actual earnings in computing the PIA?*

Adjusted earnings are used instead of actual earnings to reduce the difference between a younger worker's average income and an older individual's average earnings. If not, the younger worker's benefit amounts would be based on fewer, more recent years of earnings while the older worker's average earnings would include lower amounts that were earned and taxable in earlier years of Social Security coverage.

700.7. *Are there exceptions for individuals who have worked several years at low earnings?*

A special minimum PIA is possible for workers who have worked under Social Security for many years at low earnings. (See §717.) At least 11 years of working at low earnings are required. Additional years are usually needed to bring the amount of the special minimum PIA to more than the PIA computed under the methods explained in subsections 700.3 - 700.5 above.

AME OR AIME

701. How are the Average Monthly Earnings (AME) or the Average Indexed Monthly Earnings (AIME) computed?

To compute your AME or AIME, divide your total earnings in the “computation years” (see §703) by the number of months in those years. The exception is explained in §709. If the result is not an exact multiple of \$1, round down to the next lower multiple of \$1.

702. When is the usual computation formula used?

The usual computation formula is used if:

- A. You become entitled to retirement or disability insurance benefits;
- B. You die without being entitled to retirement or disability insurance benefits; or
- C. We need to compute your PIA again. (See §722.)

COMPUTATION YEARS

703. Computation years defined.

703.1. What are “computation years”?

Your computation years are those years, selected from the “base years”, that you earned the most income. Your total earnings in the computation years are then added together and divided by the number of months in those years to get the AME or the AIME.

703.2. How are the number of years, selected as the computation years, determined?

The **number** of years, which are selected as the “computation years” in a particular case, is determined in the following steps:

- A. Determine the “elapsed years” using the rules in §704 or §707;
- B. Add or divide this number by five, depending upon your type of claim:
 - 1. **Retirement or survivors insurance benefits:** subtract five from the result attained in (A) above. Go to step (C).
 - 2. **Disability insurance benefits where you were first entitled after June 1980:** divide the result attained in (A) above by five. Disregard any fraction (do not round up or down). Subtract the result (cannot exceed five) from the number of elapsed years. Go to step (C).
 - 3. **Disability insurance benefits for months after June 1981:** divide the result attained in (A) above by five. Disregard any

fraction (do not round up or down). Subtract the result (cannot exceed five) from the number of elapsed years. You may further reduce the elapsed years by the number of years that a child, either yours or your spouse's, under age three was living primarily with you ("childcare years"), provided that: (1) you did not have earnings each childcare year; and (2) the combined total number of childcare years and regular years subtracted from the elapsed years (attained in step (A) above) does not exceed three. Go to step (C).

- C. The number remaining is the number of "computation years". This number cannot be less than two. The computation years are selected from the base years, as defined in §705 or §709. The years selected are those of highest earnings. For the computation indexed method (see §700), the selection is made after the earnings are indexed.
- D. To compute the AME or AIME, add together your total earnings in the computation years. Divide this result by the number of months in those years.

ELAPSED YEARS

704. Elapsed years defined.

704.1. What are "elapsed years"?

Under the usual formula, "elapsed years" are those calendar years after 1950, or after you turn 21, if this is later.

704.2. How do you determine elapsed years for retirement insurance benefits?

For retirement insurance benefit purposes, elapsed years are those calendar years after 1950 up to the year you turn 62.

An insured worker turned 62 on December 2, 1994, and filed his application for retirement insurance benefits on January 3, 1995. There are 40 elapsed years, counting the years from age 22 through 1993. The number of "computation years" is 35 (40 minus 5).

704.3. How do you determine elapsed years for survivors insurance benefits?

For survivors insurance benefit purposes, elapsed years are those calendar years after 1950 up to either: (1) the year of death; or (2) the year of attainment of age 62, whichever is earlier.

Determining elapsed years for survivors insurance benefits (year of death). An insured worker died on November 3, 1994, at the age of 59. The widow filed a claim for mother's benefits on November

10, 1994. There are 37 elapsed years beginning with 1957 (age 22) through 1993. There are 32 computation years (37 minus 5).

Determining elapsed years for survivors insurance benefits (attainment of age 62). An insured worker turned 62 in October 1993 and died on September 4, 1995. His widow filed for widow's insurance benefits on October 1, 1992. The elapsed years end the year before the year that the worker attained age 62. There are 39 elapsed years beginning with 1954 through 1992. There are 34 computation years (39 minus 5).

704.4. *How do you determine elapsed years for disability insurance benefits?*

For disability insurance benefit purposes, elapsed years are those calendar years after 1950 up to either:

- A. The year your waiting period for disability insurance benefits begins (see §502); or
- B. If there is no waiting period, up to the year of your first month of entitlement.

The year you reach age 62 and later years are not counted as elapsed years. Also, whole or partial years within a period of disability are not normally counted as elapsed years. However, you can count them if your PIA would be higher if they were counted or if your insured status is affected by not counting them.

An insured woman turned 50 in January 1995 and is found entitled to disability insurance benefits. It is determined that her waiting period began on March 1, 1995. The elapsed years run from 1967 (age 22) through 1994 and total 28.

BASE YEARS

705. What are base years?

Your base years are the years after 1950 up to the year of the first month you become entitled to retirement or disability insurance benefits. For a survivor's claim, the base years include the year of the worker's death. A year wholly contained in a period of disability is not included in the base years. Years partially within a period of disability are included.

Mr. Clifford applied for retirement insurance benefits in October 1995. He is found entitled to a reduced benefit beginning October 1995, the month in which he is age 62 throughout the month. His base years for purposes of the initial computation of his benefit rate are the years 1951 through 1994, the year before the year in which he became entitled to benefits (October 1995). Since the elapsed years are 40

(1955 through 1994, the year before he attains age 62), the computation years are 35 (40 minus 5). To find the PIA, the earnings are averaged over the 35 highest of the base years 1951 through 1994 after the earnings are indexed. Mr. Clifford's PIA may be recomputed to take into account any earnings he had in 1995. This increase, if any, in his retirement insurance benefit will be effective January 1996. (See §722.)

BENEFIT RATE COMPUTATIONS

706. Determining the PIA.

706.1. How do you determine the PIA for first eligibility or death before 1979?

Your PIA is determined from the table that was in the Social Security Act as of December 31, 1978 if you:

- A. Become eligible for retirement insurance benefits at age 62;
- B. Have a period of disability established; or
- C. Become eligible for survivors insurance benefits on the basis of death before 1979.

This PIA is increased in December of each year in which there is a cost-of-living increase in benefit rates. (Before 1983, the increase was effective in June.) The table and the increases are not included in this Handbook because it is not possible to keep them current.

706.2. How do you determine the PIA for first eligibility or death after 1978?

Your PIA is determined by applying a mathematical formula to the AIME if you either:

- A. Become eligible for retirement insurance benefits at age 62;
- B. Have a period of disability established; or
- C. Become eligible for survivors' insurance benefits on the basis of death in 1979 or later.

The PIA, with first eligibility in 1995, equals the sum of the following:

- A. 90 percent of the first \$426 of the AIME, **plus**
- B. 32 percent of the amount above \$426 up through \$2,567, **plus**
- C. 15 percent of any amount in excess of \$2,567.

The dollar amounts at which these percentages change are called bend points. The bend points change for each year of eligibility based on the changes in your average total wages from the previous indexing year. The new bend points apply if you first become eligible or die in that

year. They will remain applicable to PIA determinations in later recomputations.

Cost-of-living increases (see §719) are applied to compute your PIA beginning with the first year of eligibility, regardless of when you become entitled to benefits. Cost-of-living increases are not considered before the year of first eligibility, since your earnings in most of these years are “indexed” in computing the AIME.

706.3. How do you determine the PIA for first eligibility in years between 1979 and 1984?

You are guaranteed a PIA that is at least the amount computed under the pre-1979 method if you meet the following conditions:

- A. You have at least one year of covered earnings before 1979;
- B. You were not eligible for retirement or disability insurance benefits before 1979; and
- C. You first became eligible for retirement insurance benefits between 1979 and 1984.

Your AME and PIA in effect on December 31, 1978, apply. Again, cost-of-living increases are effective beginning with the year of your first eligibility. This also applies to the survivors of a worker who was eligible but did not apply for benefits under this provision.

706.4. How is PIA determined for entitlement at any time where the old-start formula yields a higher payment?

If the old-start formula (§§707-710) produces a higher payment, your PIA is based on the AME. This is determined from the December 31, 1978, table with cost-of-living increases beginning with the year of your first eligibility.

706.5. How do you determine the PIA if you had a prior period of disability?

If you had a prior entitlement to disability insurance benefits and you: (1) become eligible for a retirement insurance benefit; (2) become re-eligible for a disability insurance benefit; or (3) die, your PIA is the higher of the one computed as if you were first eligible after 1978, or the former PIA. (See (706.2) above.) This applies if more than 12 months have passed since your last entitlement to disability insurance benefits.

If fewer than 12 months have passed since your last disability entitlement after 1978, your current PIA is the higher of the former PIA (a continuation of the former PIA), or a new PIA computed under current methods.

OLD-START FORMULAS

707. The simplified old-start formula.

707.1. What is the simplified old-start formula?

The simplified old-start formula is used to figure the AME and the Primary Insurance Benefit (PIB). It is used if an individual meets the requirements for its use and if it produces a higher PIA than the AME or AIME formula.

707.2. How is the simplified old-start formula used?

Under the simplified old-start formula, your earnings for 1937 through 1950 are considered a single total amount. This total amount is allocated equally to each of those years (1937-1950). These years are used along with years after 1950 to determine your average earnings. This formula considers computation and elapsed years in the usual way (§§703-704) except that years are counted from after 1936 instead of after 1950. Base years, however, are determined differently as explained in §705.

708. When can the simplified old-start formula be used?

Use of the simplified old-start formula requires that you meet the following conditions:

- A. You have at least one quarter of coverage before 1951;
- B. You have reached age 62, died, or become disabled after December 1977;
- C. You have reached age 22 after 1937 and before 1951; or you have reached age 22 after 1950 and have less than six quarters of coverage after 1950; and
- D. You did not have a period of disability that began before 1951, unless the period of disability is entirely ignored (because a higher PIA results by including the period of disability).

709. Figuring the AME under the simplified old-start formula.

709.1. How do you compute the AME under the simplified old-start formula for earnings after 1950?

Under the simplified old-start formula, your AME is figured by determining your base year earnings. Base years are determined the same way as under the AME formula (see §705). Earnings are used and credited up to the annual maximums. When eligibility is after 1978, earnings in and after the year of eligibility cannot be included.

709.2. How do you compute AME under the simplified old-start formula for earnings before 1951?

To compute your AME under the simplified old-start formula for earnings before 1951, perform the steps below:

- A. Add up your total pre-1951 earnings. This includes earnings posted to your earnings record plus any military wage credits, earnings under railroad retirement transferred to Social Security, and wages if you were an intern in the U.S. during World War II;
- B. Divide this total by either: (a) **the number of years passed** since you turned 20 and prior to 1951; or (b) **one**, if you turned 21 after 1949. The result is your earnings in each year used in the divisor.
 1. You may not credit more than \$3,000 to each of these years. Credit any remainder under \$3,000 either: (a) to the year in which you turned 20 (if you turned 20 before 1951); or (b) to 1949, if you turned 21 after 1949. If you have anything left over more than \$3,000, credit this amount, in \$3,000 increments, to the year in (a) and each consecutive preceding year.
 2. You may not credit more than \$42,000 (\$3,000 a year) to the period 1937 through 1950.
- C. Divide your highest computation years by the number of months in the computation years to determine your AME.

710. How is the Primary Insurance Benefit (PIB) computed under the simplified old-start formula?

The PIB is computed from the AME under the simplified old-start formula as follows:

- A. Take 40 percent of the first \$50 of the AME;
- B. Add 10 percent of the next \$200 of the AME;
- C. Increase the sum by one percent for each increment year; and
Note: The number of increment years is the number, not more than 14 or less than four, that is equal to your total pre-1951 earnings divided by \$1,650. Ignore any fraction.
- D. Round the total to the nearest cent. The result is the PIB. You can convert the PIB to the PIA by using the benefit table that was in the Social Security Act as of December 31, 1978. Be sure to add any cost-of-living increases beginning with the year of eligibility or death. (See §706.)

PERIOD OF DISABILITY EXCLUSION

711. Are established periods of disability excluded when benefits are computed?

Yes. You must exclude an established period of disability in figuring your benefit unless the exclusion of the period results in fewer benefits or a loss of insured status. This exclusion applies to all computation formulas. (See Chapter 5 for the requirements for establishing a period of disability and for the beginning and ending dates of this period.)

712. Figuring the PIA under the 1990 consolidated methods.

712.1. What computation methods are used for individuals eligible for benefits before the AME method?

Computation methods for individuals who were eligible for benefits before the AME method were consolidated into the two formulas for benefits payable June 1992, or later. The old computation methods continue to apply when:

- A. An individual is entitled on the record in the month before the new entitlement; and
- B. The PIA is based on a pre-1990 computation formula.

Because these old methods are rare, they are not discussed in this Handbook.

712.2. How are you eligible for either method of computing benefits?

To be eligible for either method of computing benefits, you must:

- A. Become entitled to benefits on the record effective June 1992 or later. There is to be no other person on the record with benefits based on an old computation method in the month before the month you become entitled; and
- B. Not qualify for any other new start method (methods enacted in 1965 or later which apply to earnings after 1950) or simplified old-start methods.

712.3. How do you compute elapsed years under the 1990 AME formula?

Under the 1990 AME formula, elapsed years for **retirement insurance benefits** are the later of either:

- A. The years after 1950 up to 1961;
- B. The year you turn 62; or

C. The year you turned 65 if you are a male born before January 2, 1913.

For survivors benefits, the elapsed years are years after 1950 up to the year of death. However, if the worker attained retirement age and died prior to 1961, elapsed years go up to 1961.

Years before age 22 and years wholly or partially within a period of disability (if a higher primary insurance amount results) are excluded from the elapsed years.

712.4. How do you compute base years, computation years, and the divisor month under the 1990 AME formula?

For determining the base years, computation years, and the divisor month, see §§705-706.

712.5. How is the PIA determined for the AME under the 1990 AME formula?

The PIA for the AME is determined by a table. The table and the increases are not included in this Handbook because it is not possible to keep them current.

712.6. What is the difference between the 1990 old-start formula and the simplified old-start method?

The 1990 old-start formula is similar to the simplified old-start method (see §§707-708) but there are several basic differences:

- A. Elapsed years are computed based on the retirement age of 65 for males born before January 2, 1911. For those born January 2, 1911, through January 1, 1913, retirement age occurs in 1975; and
- B. Earnings in years prior to 1951 are allocated as follows:

The first year of the allocation period is:

- 1. 1937-if the worker was born before January 2, 1917;
- 2. 1950-if the worker was born January 2, 1929, or later;
- 3. The year the individual turns 21; or
- 4. 1950-if the worker died before 1951 and before age 22.

The last year of the allocation period is:

- 5. 1950-if the individual was alive on January 1, 1951; or
- 6. The year prior to the year of death if the individual died before January 1, 1951.

After the period is determined, the years are counted and the earnings are divided by the number of years.

Note: Recomputations of benefits for 1992 and later years of earnings are computed under one of the 1990 old-start methods whenever the

eligibility year is prior to 1978. This is true regardless of the computation methods used to include earnings in previous years.

Mr. Hile, born in 1924, dies in 1950. His earnings for 1937 to 1950 equal \$12,950. His earnings allocation period is 1945 (the year he turns 21) through 1949 (the year prior to his death). There are five years in the allocation period. His earnings of \$12,950 are divided by five (the number of years in the allocation period). \$2,590 is allocated to each year (1945 - 1949). If Mr. Hile had a period of disability, it would have been excluded from the allocation period.

713. What is included as “total earnings” when computing the AME or AIME?

In computing your AME or AIME, include the following as total earnings (subject to the yearly limits in §714):

- A. Wages covered by Social Security and paid during the computation period;
- B. Self-employment income covered by Social Security and allocated to this period;
- C. Military service wage credits;
- D. Railroad compensation creditable for Social Security purposes; and
- E. Deemed wages if you were interned in the U.S. during World War II.

You may not count earnings from employment or self-employment not covered by Social Security in computing your AME.

MAXIMUM EARNINGS

714. What are the maximum earnings that can be counted for any calendar year for computing AME or AIME?

The table below shows the maximum earnings for each year that you can use when computing your AME or AIME.

Yearly Maximum Earnings

Year	Maximum Earnings	Year	Maximum Earnings
2001	\$80,400	1982	\$32,400
2000	\$76,200	1981	\$29,700
1999	\$72,600	1980	\$25,900
1998	\$68,400	1979	\$22,900
1997	\$65,400	1978	\$17,700
1996	\$62,700	1977	\$16,500
1995	\$61,200	1976	\$15,300
1994	\$60,600	1975	\$14,100
1993	\$57,600	1974	\$13,200
1992	\$55,500	1973	\$10,800
1991	\$53,400	1972	\$9,000
1990	\$51,300	1968-1971	\$7,800
1989	\$48,000	1967	\$6,600
1988	\$45,000	1966	\$6,600
1987	\$43,800	1959-1965	\$4,800
1986	\$42,000	1955-1958	\$4,200
1985	\$39,600	1951-1954	\$3,600
1984	\$37,800	1940-1950	\$3,000
1983	\$35,700	1937-1939	\$3,000 per employer

715. Allocation of self-employment income.

715.1. How is self-employment income allocated for the years 1978 and later?

Self-employment income in taxable years (other than calendar years) is allocated proportionately to the two calendar years in which it was

derived. The allocation is based on the number of months in each calendar year. Your self-employment income may be allocated for more than four calendar quarters if the taxable year includes parts of two calendar years. (See §214.) Only your self-employment income allocated to the calendar quarters in computation years is considered in figuring your AIME.

A self-employed person has a fiscal taxable year beginning May 15, 1983, and ending May 14, 1984. His \$6,000 self-employment income is allocated \$3,500 (7/12) to calendar year 1983 and \$2,500 (5/12) to 1984.

715.2. *How is self-employment income allocated prior to 1978?*

For taxable years beginning before 1978, your self-employment income is allocated equally to the calendar quarters, wholly or partly, in the taxable year in which it was derived. This allocation begins with the quarter in which the taxable year ended and continues to the preceding three calendar quarters.

715.3. *What if a self-employed person's taxable year has not ended when the PIA is computed?*

If your self-employed taxable year has not ended at the time the PIA is computed, your net earnings from self-employment earned in the incomplete taxable year cannot be considered in computing the PIA. This is true even if the income may have been partially derived in the closed calendar year. The self-employment income is recorded and the PIA recomputed after you file your tax return.

716. Elimination of the minimum benefit.

716.1. *Is there a minimum social security benefit?*

The minimum social security benefit was eliminated in January 1982 for workers who initially become eligible for retirement or disability insurance benefits after December 1981. The PIA for these persons is either:

- A. The actual amount computed by a mathematical formula; or
- B. The amount determined from an extended version of the PIA table that was in the Social Security Act as of December 1978. That table has been extended downward from the original minimum of \$121.80 to the lowest possible PIA (\$1.70).

If you have covered employment for many years at low earnings, the special minimum PIA (see §717) may apply instead.

716.2. Is the elimination of the minimum social security benefit effective for members of religious orders?

If you are a member of a religious order, the elimination of the minimum social security benefit is effective January 1992 under the following conditions:

- A. You are required to take a vow of poverty (see §932);
- B. You become eligible for benefits or die in or after January 1992; and
- C. Your religious order elected Social Security coverage before December 29, 1981.

717. Special minimum PIA.

717.1. What is a “special minimum PIA”?

A “special minimum PIA” is payable to some persons who have had covered employment or self-employment for many years at low earnings. It only applies if the resulting payment is higher than the benefit computed by any other method.

717.2. How is the special minimum PIA computed?

The amount of the special minimum is computed by multiplying the number of years of coverage, in excess of 10 and up to 30, by \$9.00 for benefits payable for years before 1979. Multiply the number of years of coverage, in excess of 10 and up to 30, by \$11.50 for benefits payable for 1979 and later.

Cost-of-living increases apply to the special minimum PIA beginning in 1979. The cost-of-living increase is required to be published in the Federal Register on or before November 14 of the year preceding the year the benefits are payable.

717.3. What is the special minimum PIA for 2000?

The chart below shows the special minimum PIA payable in 2000.

Special Minimum PIA Table Effective for December 2000

Number of years of coverage	PIA	Maximum family benefit
11	\$ 29.40	\$ 44.70
12	59.40	89.80
13	89.70	134.90

Number of years of coverage	PIA	Maximum family benefit
14	119.50	179.80
15	149.50	224.50
16	179.60	270.20
17	209.70	315.40
18	239.90	360.30
19	269.90	405.50
20	299.80	450.50
21	330.20	495.90
22	360.00	540.80
23	390.40	586.60
24	420.50	631.50
25	450.50	676.10
26	480.80	722.10
27	510.70	766.90
28	540.70	811.80
29	570.80	857.10
30	600.90	902.00

717.4. How do you determine your number of years of covered work?

The number of years of covered work must never be more than 30. Years of covered work are determined by the following:

- A. Add up your total wages credited to you for the years after 1936 and before 1951.
- B. Divide the sum in (A) by \$900. Do not count any fraction (do not round up or down). This number must not be higher than 14.
- C. Count the number of years after 1950 which are: (1) "base years" within the meaning of §§703 through 705; and (2) years in 1951-

1978 in which you have credit for wages and self-employment income of at least 25 percent of the maximum amount. Add this to the result attained in (B).

- D. Count the number of years after 1978 in which you have credit for at least 25 percent of the amounts shown in the table below through 1990. Add this to the result attained in (C).

Year	Earnings Amount	Year	Earnings Amount
1979	\$18,900	1990	\$38,100
1980	\$20,400	1991	\$39,600
1981	\$22,200	1992	\$41,400
1982	\$24,300	1993	\$42,900
1983	\$26,700	1994	\$45,000
1984	\$28,200	1995	\$45,300
1985	\$29,700	1996	\$46,500
1986	\$31,500	1997	\$48,600
1987	\$32,700	1998	\$50,700
1988	\$33,600	1999	\$53,700
1989	\$35,700	2000	\$56,700

Beginning in 1991, the law was changed to require that a minimum earnings amount of 15 percent is needed for a credit year.

The amounts used for 2001 and later will be determined by the Secretary of Health and Human Services (HHS) based on increases in the average nationwide wage. These amounts are published in the Federal Register on or before November 1 of the year preceding the year the benefits are payable.

718. Special formula for determining the PIA for non-covered employment.

718.1. Is the PIA formula the same for workers who are eligible for a pension from non-covered employment?

The formula for determining the PIA has been modified for workers who are eligible for a pension from non-covered employment. Beginning in 1986, the change was phased in for workers eligible for retirement or disability insurance benefits and for a pension from non-covered employment. It became fully effective in 1990.

718.2. How does the revised PIA formula benefit workers eligible for a pension from non-covered employment?

The revised benefit formula eliminates the windfall in benefits for individuals who have only minimal Social Security coverage and will receive a pension based on years of work in non-covered employment. A worker's PIA will never be reduced by more than one-half of his or her pension from non-covered employment. (See §706)

718.3. How is the revised formula used?

The revised formula substitutes 40 percent for the present 90 percent factor. The reduction is phased in under the following schedule:

Revised PIA Formula

If you are initially eligible for retirement or disability benefits in...	Then the first percentage factor in the formula is...
1986	80
1987	70
1988	60
1989	50
1990 or after	40

Use the following schedules instead of the above procedure if they yield a larger percentage.

Revised PIA Formula

For Years 1986 - 1988	
If your total years of coverage equal...	Then the first percentage factor in the formula is...
29	80
28	70
27	60
26	50
25 or fewer	40
For Years 1989 or Later	
29	85
28	80
27	75
26	70
25	65
24	60
23	55
22	50
21	45
20 or fewer	40

The year of coverage is equal to the years used to calculate the special minimum PIA. (See §717.) However, the percentage needed for a year of coverage for the modified formula remains 25 percent for years 1991 and later.

718.4. Are any other methods considered?

In addition to the above methods, the simplified old-start formula (see §707) and the special minimum PIA (see §717) are also considered. The computation yielding the highest PIA is used to determine the amount of benefits payable.

718.5. When does the revised formula not apply?

This provision does not apply:

- A. To benefits under the Railroad Retirement Act;
- B. To federal employees who are covered for Social Security purposes;
- C. To most employees of nonprofit organizations who were exempt from coverage before 1984; and
- D. In computing benefits for survivors.

719. Cost-of-living increases.

719.1. How do cost-of-living increases affect benefits?

Benefits may be automatically increased to keep pace with increases in the cost-of-living if laws for general benefit increases are not passed. Benefit increases depend upon the condition of the Federal Old-Age, Survivors and Disability Trust Funds. The increases are based on the smaller of either: (1) *the Consumer Price Index* as published by the Department of Labor; or (2) the average wage index, that is based on nationwide wages. Where the index for a current base quarter shows an increase over the same index for the last base quarter, the following happens: each PIA, each related maximum family benefit, each transitionally insured benefit and each special age 72 payment is raised to reflect the same percentage of increase (rounded to the nearest one-tenth of one percent). The base quarter is either: (1) the third calendar quarter of each year after 1982, or (2) a later calendar quarter within which a general benefit increase became effective.

719.2. When does the cost-of-living benefit increase become effective?

This cost-of-living benefit increase becomes effective beginning with December of the year that contains the base quarter for the index increase. The cost-of-living increase is published in the *Federal Register* on or about November 14 of the year preceding the year the benefits are payable.

720. Delayed retirement credit.

720.1. How does the delayed retirement credit affect benefits?

The delayed retirement credit increases your benefit amount if you did not receive benefits for months after turning age 65. Delayed retirement credit increases apply for benefits beginning January of the year following the year you reach full retirement age. However, it does not apply to the special minimum PIA, which is explained in §717.

720.2. What is an increment month?

Each month in which you are at least full retirement age, but not yet age 70 (age 72 if you turned age 70 before 1984), is an increment month. An increment month is also any month you are eligible, but did not receive a benefit.

720.3. How do increment months affect the delayed retirement credit?

The delayed retirement credit is based on increment months. They may increase your benefit amount:

- A. If you are a retirement insurance beneficiary and you turn 65 before 1982, then you receive an increase equal to 1/12 of one percent of the benefit for each increment month;
- B. If you are a retirement insurance beneficiary and you turned 65 after 1981 and before 1990, then you receive an increase equal to 1/4 of one percent of the benefit for each increment month; or
- C. If you are a retirement insurance beneficiary who turned 65 after 1989, then your benefit amount is increased for each increment month at 1/4 of one percent, plus 1/24 of one percent for each even-numbered year from 1990 through 2008 in which you are full retirement age or older. The rates of credit are as shown in the table below.

Chart of Delayed Retirement Credit Rates.

If you turned 65...	Then your monthly percentage is...and	Your yearly percentage is...
Prior to 1982	1/12 of 1%	1%
1982-1989	1/4 of 1%	3%
1990-1991	7/24 of 1%	3.5%
1992-1993	1/3 of 1%	4%
1994-1995	3/8 of 1%	4.5%
1996-1997	5/12 of 1%	5%
1998-1999	11/24 of 1%	5.5%
2000-2001	1/2 of 1%	6%
2002-2003	13/24 of 1%	6.5%
2004-2005	7/12 of 1%	7%

If you turned 65...	Then your monthly percentage is...and	Your yearly percentage is...
2006-2007	5/8 of 1%	7.5%
2008 or later	2/3 of 1%	8%

D. If you are a widow(er) of a worker who had received or was eligible for delayed retirement credits, then you are entitled to the same increase that had been applied to the benefit of your deceased spouse or for which the deceased was eligible as of the time of death. A surviving (including divorced) spouse receiving widow(er)'s benefits is also entitled to this increase.

721. Recomputation of the PIA.

721.1. Can the PIA be recomputed?

Your PIA may be recomputed (and increased) one or more times after the first computation. The first computation is made at the time you become entitled to retirement or disability insurance benefits. There is no need for a beneficiary to take any special action to have the benefit recomputed. There are two types of recomputations: automatic and railroad.

721.2. What is an “automatic recomputation”?

The automatic recomputation (see §722) gives you credit for any substantial additional covered earnings in the year you first became entitled to benefits or in a later year. A recomputation to include a particular year's earnings is effective in January following the year in which the earnings were paid. For example, a benefit increase resulting from an automatic recomputation to include 1992 earnings will first be paid for January 1993.

721.3. What is a “railroad computation”?

The railroad recomputation increases survivor benefits by including railroad earnings that could not be used in figuring the Social Security benefit(s) when the worker was alive.

722. The automatic recomputation.

722.1. When is the automatic recomputation used?

The automatic recomputation is used to recompute the PIA. It is used if a person has wages or self-employment income for any year for any part of which he or she is entitled to retirement or disability insurance benefits.

722.2. How is the automatic recomputation determined?

The usual computation formula or the special minimum PIA formula (see §717) is used. If you qualify for either the simplified old-start or the 1990 consolidated methods, and each yields a higher PIA, the appropriate formula (see §707) is used. In effect, any year for which retirement or disability insurance benefits are paid can be a base year in the automatic recomputation of that year's retirement or disability insurance benefits.

722.3. What if a retirement or disability insurance beneficiary dies?

The automatic recomputation credits any earnings in the year that a retirement or disability insurance beneficiary dies. It is the same as above, except that it is effective with the month of death. Therefore, any resulting increase in the PIA is reflected in the amount of all monthly survivors benefits, beginning with the first month of entitlement to survivors benefits.

722.4. Can an automatic recomputation decrease the PIA or benefits?

No. A recomputation never decreases your PIA or benefits. However, an automatic recomputation can increase your PIA or benefits if your earnings in the additional base year considered are higher than earnings in the lowest computation year used in your last computation or recomputation.

REDUCED BENEFIT RATE

723. Reduction of benefit rate.

723.1. When are benefit rates reduced?

Your benefit rate is reduced if you become entitled to the following benefits at the ages shown:

- A. Retirement insurance benefits at age 62 through the month before you reach Full Retirement Age (FRA);
- B. Husband or wife's insurance benefits at age 62 through the month before you reach FRA, provided that you do not have in care a child of the worker either under age 18 or disabled and entitled to benefits;
- C. Widow(er)'s insurance benefits beginning at any time from age 50 through the month before you reach FRA;
- D. Widow(er)'s insurance benefits after the deceased worker has received a retirement insurance benefit reduced for age;

- E. Disability insurance benefits received after a reduced retirement insurance benefit; or
- F. Retirement or disability insurance benefit received after a reduced widow(er)'s insurance benefit. This applies only to workers born before 1928.

723.2. How is a reduction in benefits made?

The reduction is made by first determining your full benefit. This benefit rate is then reduced by a specified percentage for each month you are entitled before your FRA. The reduced rate is payable as of the first month of your entitlement to benefits. For retirement and spouse's benefits, you must be at least age 62 throughout the month before entitlement to reduced benefits begins.

These reduced benefits continue at a reduced rate even after FRA. The reduced disability insurance benefit is converted at FRA to a reduced retirement insurance benefit.

723.3. When is the reduced benefit rate recomputed?

The reduced benefit rate may be recomputed to include additional earnings. An increase in your benefits, either resulting from additional earnings or from a cost-of-living increase, is reduced in proportion to the reduction in effect in the first month your benefits were elected. A benefit rate may also be increased to give you credit for certain months before FRA in which the reduced benefit was not paid. (See §728.)

723.4. How will an increase in the retirement age affect reduced benefits?

Beginning with the year 2000 (workers and spouses born 1938 or later, widow(er)s born 1940 or later), the retirement age increases gradually from age 65 until it reaches age 67 in the year 2022. This increase affects the amount of the reduction for persons who begin receiving reduced benefits.

An additional reduction applies to primary insurance benefits and spouse's benefits based on the additional reduction period. The modification for widow(er)'s benefits is slightly different. The reduction amount at age 60 remains at 28 1/2 percent of the full benefit even as retirement age increases.

723.5. What is the full retirement age for workers and spouses born after 1937?

The following chart contains the full retirement age for workers and spouses born after 1937:

Full Retirement Age

If your birth date is...	Then your full retirement age is...
1/2/38-1/1/39	65 years and 2 months
1/2/39-1/1/40	65 years and 4 months
1/2/40-1/1/41	65 years and 6 months
1/2/41-1/1/42	65 years and 8 months
1/2/42-1/1/43	65 years and 10 months
1/2/43-1/1/55	66 years
1/2/55-1/1/56	66 years and 2 months
1/2/56-1/1/57	66 years and 4 months
1/2/57-1/1/58	66 years and 6 months
1/2/58-1/1/59	66 years and 8 months
1/2/59-1/1/60	66 years and 10 months
1/2/60 and later	67 years

723.6. What is the full retirement age for widow(er)s born after 1939?

The following chart contains the full retirement age for widow(er)s born after 1939:

Full Retirement Age

If your birth date is...	Then your full retirement age is...
1/2/40-1/1/41	65 years and 2 months
1/2/41-1/1/42	65 years and 4 months
1/2/42-1/1/43	65 years and 6 months
1/2/43-1/1/44	65 years and 8 months
1/2/44-1/1/45	65 years and 10 months
1/2/45-1/1/57	66 years

If your birth date is...	Then your full retirement age is...
1/2/57-1/1/58	66 years and 2 months
1/2/58-1/1/59	66 years and 4 months
1/2/59-1/1/60	66 years and 6 months
1/2/60-1/1/61	66 years and 8 months
1/2/61-1/1/62	66 years and 10 months
1/2/62 and later	67 years

724. Basic reduction formulas.

724.1. What are the basic reduction formulas?

There are four basic reduction formulas:

- A. A retirement insurance benefit is reduced by $\frac{5}{9}$ of one percent (or 0.0056) for each month of entitlement before FRA;
- B. Wife's and husband's insurance benefits are reduced by $\frac{25}{36}$ of one percent (or 0.0069) for each month of entitlement before FRA;
- C. Widow(er)'s insurance benefits are reduced for each month of entitlement between ages 60 and FRA. The amount of the reduction for each month is derived from dividing 28.5 percent by the number of possible months of early retirement. A person whose FRA is age 65 could be entitled up to 60 months before FRA. Each month is therefore 28.5 percent divided by 60 (or 0.00475). A person whose FRA is age 66 could be entitled up to 72 months before FRA. Each month is therefore 28.5 percent divided by 72 (or 0.00396). Widow(er)'s insurance benefits payable before age 60 based on disability are not further reduced for months before age 60; and
- D. Retirement insurance benefits and spouse's benefits are reduced by $\frac{5}{12}$ of one percent (or 0.0042) for each month of reduction in excess of 36 months. This applies to individuals whose full retirement age is after age 65. (See §723.)

724.2. How does the reduction formula affect retirement insurance benefits?

If you receive payment for every month, you will usually be ahead in total retirement insurance benefits received for the first 15 years beginning with your month of entitlement to the reduced benefit. If you receive payments for more than 15 years, the total retirement insurance benefits you receive will usually be less than if you had waited until FRA for an unreduced retirement insurance benefit.

724.3. How does the reduction formula affect widow(er)'s insurance benefits?

If you receive a reduced widow(er)'s insurance benefit beginning between ages 60 and FRA, you will generally be ahead as to cumulative benefits you receive during approximately the 17 1/2 years after the month of entitlement. You will be behind after that. If you have already decided to take your own benefits at age 62 (perhaps monthly payment rates are much higher), you will generally be ahead in total benefits for longer than 17 1/2 years—often much longer—by taking reduced widow(er)'s insurance benefits at age 60.

724.4. How does the reduction formula affect wife's or husband's insurance benefits?

If you receive only reduced wife's or husband's insurance benefits for every month, you will usually be ahead for 12 years. However, if you outlive the worker, your widow(er)'s insurance benefit will be computed based on your age at the time of the worker's death. There is no reduction for the prior entitlement as a wife or husband. For the reduction of a disability benefit, see §726.

725. How is the number of reduction months computed?

To compute the number of reduction months, count all months, beginning with the first month of your entitlement to reduced benefits, up to the month in which you reach full retirement age.

For widow(er)'s insurance benefits that begin before age 60, the reduction formula in §724.3 requires using only months between age 60 and full retirement age.

726. Disability insurance benefit reduced for age.

726.1. When is a disability insurance benefit reduced for age payable?

A disability insurance benefit reduced for age may be payable if you are already entitled to either retirement insurance benefits or reduced widow(er)'s insurance benefits. This is true whether or not your benefit is based on disability.

726.2. What if a disability insurance benefit becomes payable to a beneficiary entitled to a reduced retirement insurance benefit?

If a disability insurance benefit becomes payable to you after becoming entitled to retirement insurance benefit, your disability benefit is reduced by the amount your retirement benefit is reduced for the months prior to the month of entitlement to the disability benefit in which you received retirement benefits.

727. How is the reduction amount computed?

How your reduction amount is computed depends upon whether you are entitled only to: (1) a retirement insurance benefit, (2) a wife or husband's insurance benefit, (3) a widow(er)'s insurance benefit, or (4) a disability insurance benefit. If you are entitled to a combination of benefits, the time at which you become entitled to each benefit can affect the method of figuring the reduction amount.

728. Adjustment of reduction factor at FRA.

728.1. Why is an adjustment of the reduction factor made at FRA?

An adjustment of the reduction factor is made at FRA to determine your benefit payable for the month you reach full retirement age and later months. In addition, an adjustment may be made at age 62 for a widow(er)'s insurance benefit for the month of attainment of age 62 and later months.

728.2. Under what conditions are adjustments of the reduction factor made?

Adjustments are made under the following circumstances:

- A. Your entitlement to retirement insurance benefits began between ages 62 and full retirement age, and
 - 1. A work deduction (including a partial deduction) was imposed for any month before FRA; or
 - 2. You were also entitled to disability insurance benefits for any month of your entitlement to retirement insurance benefits.
- B. Your entitlement to wife's or husband's insurance benefits began between ages 62 and full retirement age, and one of the following conditions applies:
 - 1. A work deduction (including a partial deduction), based on your work and/or your spouse's work, was imposed for any month before full retirement age;
 - 2. A deduction was imposed because you refused vocational rehabilitation;
 - 3. A benefit was not payable for a month before full retirement age because you were entitled to other benefits which terminated the benefit; or
 - 4. A full benefit was payable for some months because you had in care your spouse's child (under age 16 or disabled) who was also entitled to benefits.

C. Your entitlement to a widow(er)'s insurance benefit began between ages 50 and full retirement age and one of the following conditions applies:

1. A work deduction (including a partial deduction) was imposed for any month;
2. A full benefit was payable for any month because you had a child in care as defined in §312; or
3. A benefit was not payable because of a terminating event.

728.3. How is the benefit amount recomputed?

An application is not required for this adjustment. The benefit amount is recomputed by using the reduction formula that was used to compute the original reduced benefit. The appropriate month(s) in (A) through (C) above are then excluded from the benefit reduction factor.

729. Certificate of election for husband or wife between ages 62 and FRA-child "in care."

729.1. When is a certificate of election filed to reduce husband's or wife's insurance benefits?

You may file a certificate of election to receive reduced spouse's insurance benefits if you were receiving unreduced (full) insurance benefits that are suspended because a child under age 16 or disabled is no longer in your care.

729.2. When does the certificate of election become effective?

The certificate of election is effective for any month in which you are:

- A. Between ages 62 and full retirement age;
- B. Entitled to husband's or wife's insurance benefits; and
- C. Do not have in care a child (under age 16 or disabled) of the worker entitled to a child's insurance benefit.

729.3. Is the certification of election retroactive?

The certificate of election may be retroactive for as many as 12 months before the month you file it.

729.4. How long will the reduced spouse's benefit be payable?

Once you receive reduced spouse's insurance benefits, your insurance benefit rate will continue to be payable even after you turn 65. The reduced benefits will continue as long as there is no entitled child in your care.

BENEFIT PAYMENTS

730. Maximum monthly benefits payable on one earnings record.

730.1. Is there a maximum family benefit on a Social Security record?

Yes. A maximum family benefit is payable on a Social Security record. Generally, no more than the established maximum can be paid to a family, regardless of the number of beneficiaries entitled on that Social Security record. The family maximum is determined by the method of computing the PIA and the kind of benefits payable to the worker.

730.2. How is the maximum family benefit computed under "first eligibility or death before 1979?"

If you turn 62 or become disabled or die before 1979, your PIA is based on your average monthly earnings. It is determined from the table that was in the Social Security Act as of December 31, 1978, and increased by cost-of-living increases. A table of family maximums that is associated with special minimum PIA's is published in the Federal Register after each increase.

730.3. How is the maximum family benefit computed under "first eligibility or death before age 62 in 1979 or later years?"

The family maximum is computed by adding fixed percentages of predetermined dollar amounts (i.e., the bend points) which are part of the PIA. The formula in effect for 1995 is:

- A. Take 150 (1.5) percent of the first \$544 of the PIA.
- B. Add 272 (2.72) percent of the next \$241 to the result attained in (A).
- C. Add 134 (1.34) percent of the next \$239 to the result attained in (B).
- D. Add 175 (1.75) percent of the PIA above \$1,024 to the result attained in (C).

The bend points will usually change each year in the same way that the bend points used to compute the PIA change (see §706).

730.4. How is the maximum family benefit computed under "first entitlement to disability insurance benefits after June 1980, first eligibility after 1978?"

The family maximum is 85 percent of the AIME (see §701). However, it cannot be less than the PIA nor more than 150 percent of the PIA.

731. Adjustment of individual benefit rates because of family maximum.

731.1. When is an adjustment of individual benefit rates because of the family maximum required?

An adjustment is required whenever the total monthly benefits of all the beneficiaries entitled on one Social Security earnings record exceed the family maximum that can be paid on that record for the month. All benefit rates (except retirement or disability insurance benefits and benefits payable to a divorced spouse or surviving divorced spouse) must be reduced to bring the total monthly benefits payable within the family maximum.

731.2. What if a beneficiary's benefit rate is a percentage of the insured person's PIA?

Even if a beneficiary's benefit rate is originally set by law as a percentage of the insured person's PIA, the actual benefit paid to the beneficiary may be less if the family maximum is exceeded.

731.3. Can the family maximum ever be exceeded?

The family maximum may be exceeded only by the effect of "saving clauses" and certain entitlement exceptions.

731.4. What are "savings clauses"?

When the law was changed to add new categories of beneficiaries or to increase benefits, "savings clauses" were included. The purpose of the savings clauses was to prevent the reduction of the benefits of persons already on the rolls or to make sure they get the full increase intended.

For example, under the 1972 amendments, the amount of widow(er)'s insurance benefits was increased and exceptions were made with respect to the entitlement of divorced spouses and disabled children. Savings clauses were provided so that other beneficiaries who were already entitled would not be disadvantaged by these exceptions. Therefore, the total benefits paid on an earnings record may add up to more than the normal family maximum.

731.5. How do spousal benefits affect other beneficiaries under the savings clauses?

The entitlement of a divorced spouse to a spouse's insurance benefit does not result in reducing the benefits of other categories of beneficiaries. Likewise, the entitlement of a legal spouse where a deemed spouse is also entitled does not affect the benefit of other beneficiaries entitled in the month. The other dependents or survivors insurance benefits are reduced for the maximum. The existence of the divorced spouse, surviving divorced spouse, or the legal spouse is not

taken into account. His or her benefits are not reduced because of the family maximum.

The examples above are the major exceptions to the family maximum currently in effect, although they are not exhaustive. They must be kept in mind in reading §732. To avoid repetition, the examples are not restated each time they might be pertinent.

732. How adjustment for family maximum is figured.

732.1. How is the adjustment for the family maximum calculated?

The adjustment for the family maximum is made by proportionately reducing all the monthly benefits subject to the family maximum on the Social Security earnings record (except for retired worker's or disabled worker's benefits). All benefits subject to the family maximum are reduced in order to bring the total monthly benefits payable within the limit for the particular case. (See §731 for other exceptions.)

732.2. How is the individual reduced benefit computed if the insured person is alive?

To compute the reduced benefit for an insured living person:

- A. Subtract his or her PIA subtracted from the applicable family maximum amount; and
- B. Divide any remainder among the other persons entitled to benefits on his or her Social Security earnings record.

732.3. How is the individual reduced benefit computed if the insured person is deceased?

If the insured person is deceased, the formula used depends upon the percentage of PIA that monthly benefits are based on:

- A. If all monthly benefits are based on the same percentage (e.g., all are based on 100 percent of the PIA, or all are based on 75 percent), then the family maximum is divided equally among all those who are entitled to benefits on the Social Security earnings record; or
- B. **Some benefits may be based on 100 percent, some on 82 and 1/2 percent, and/or others on 75 percent.** In cases where benefits are not based on the same percentage of PIA, each beneficiary is paid a proportionate share of the family maximum based on that beneficiary's original benefit rate.

732.4. When is the adjustment for the family maximum made?

This adjustment is made after any deductions that may be applicable. It occurs when reduction for the family maximum is required, and a benefit payable to someone other than the worker must be withheld.

Redistributing for the maximum is made as if the beneficiary whose benefit must be withheld were not entitled to the amounts withheld.

Note: The total benefits payable to the family group are not necessarily reduced when monthly benefits are not payable to one member of the family group.

The following example illustrates the following: (1) the initial adjustment of benefit rates for the family maximum; (2) the readjustment of rates when benefits are not payable to one beneficiary; and (3) the readjustment of rates when benefits are not payable to two beneficiaries.

The PIA is \$300.60 and maximum family benefits are \$535.10. The insured person is entitled to retirement insurance benefits.

Full Retirement Age

Beneficiary	Original Benefit	Adjusted for the Maximum	Adjustment When Benefits not Payable to One Child	Adjustment When Benefits not Payable to Two Children
Insured person	\$300.60	\$300.60	\$300.60	\$300.60
Spouse	150.30	58.60	78.10	117.20
First child	150.30	58.60	78.10	117.20
Second child	150.30	58.60	78.10	0.00
Third child	150.30	58.60	0.00	0.00
Total	\$901.80	\$535.00	\$534.90	\$535.00

733. Entitlement to more than one Social Security Benefit at the same time.

733.1. Can you be entitled to more than one Social Security benefit at the same time?

Yes. You may be entitled to more than one benefit at the same time. For example, a person can be entitled to parent's insurance benefits on a deceased child's Social Security earnings record and to spouse's insurance benefits on another record.

733.2. *If you are entitled to more than one benefit, which one is payable?*

If you are entitled to more than one benefit, only the higher benefit is payable, unless one of the benefits is either: (1) a retirement or disability insurance benefit (see §734); or (2) both benefits are child's insurance benefits (see §735).

The lower benefit cannot be paid even if the higher benefit is not payable due to a suspension or deduction reason. However, if the higher benefit is terminated, the lower benefit will be automatically reinstated if you are still entitled to it.

Mrs. Alicen is entitled to a spouse's insurance benefit of \$102.10 and a parent's insurance benefit of \$94.40. Her spouse's insurance benefit is suspended for several months because of her husband's work. Mrs. Alicen cannot be paid a parent's insurance benefit for these months. However, if she and her husband get divorced and she cannot meet the requirements for receiving benefits as a divorced spouse (see §311), her entitlement to spouse's insurance benefits is terminated. If she is still entitled to parent's insurance benefits, these will be paid to her, effective the month her spouse's insurance benefits terminate.

734. Entitlement to retirement or disability insurance benefits and another benefit.

734.1. *Can you be entitled to retirement or disability insurance benefits and another higher benefit?*

Yes. It is possible to be entitled to retirement or disability benefits as well as another higher benefit. In this case, you will receive the retirement or disability insurance benefit plus the difference between this benefit and the higher one. If the higher benefit is not payable, either in whole or in part for one or more months, the retirement or disability insurance benefit may be payable.

Mrs. Martel is entitled to retirement insurance benefits of \$128.10 and to spouse's insurance benefits of \$159.10. The total benefit payable to her is \$159.10, made up of a retirement insurance benefit of \$128.10 and a spouse's insurance benefit of \$31.00. If the spouse's insurance benefit is not payable for some months because of her husband's earnings, she will receive her own retirement insurance benefit of \$128.10.

734.2. *Could a larger benefit result if the smaller of the primary benefits were chosen?*

Yes. In certain situations, e.g., the disability family maximum or the workers' compensation offset, a larger total family benefit would result if you chose the smaller of the two primary benefits.

735. What happens if a child is entitled to benefits on more than one earnings record at the same time?

In some cases, a child may be entitled to child's insurance benefits on more than one earnings record. In this case, the child receives benefits on only one earnings record. Usually benefits are received on the earnings record with the higher PIA. However, the child may be paid on the earnings record with the lower PIA, provided the following conditions are met:

- A. The benefit on that earnings record, before reduction for the family maximum (see §731), is higher; and
- B. No other beneficiaries, who are entitled on any earnings record involved, would receive a lower benefit than he or she would otherwise be paid.

736. When is a child automatically entitled on a second earnings record?

A child entitled to benefits on one earnings record is automatically entitled on a second earnings record if:

- A. The child is eligible for benefits on the second earnings record; and
- B. The child eligible for benefits on both earnings records applies for benefits on the second earnings record.

737. Family maximum when child is entitled on more than one earnings record.

737.1. What happens to the family maximum on the earnings record(s) on which the child is paid?

The monthly family maximum payable on the earnings record on which the child is being paid is the total of the family maximums on each of the earnings records involved. This total is subject to a combined maximum limit.

737.2. What happens to the family maximum on the earnings record(s) on which the child is only entitled?

The family maximum on the other earnings record(s) on which the child is entitled (but not paid) is based solely on that PIA.

Note: The benefits payable to the persons entitled only on the other earnings record(s) are computed as though the child were not entitled on that earnings record.

Mr. and Mrs. Jones had eight children in the family group, five of whom were their natural children. The other three were Mr. Jones'

stepchildren by a former marriage. Mr. Jones died and all the children and the widow became entitled on his earnings record. Mrs. Jones died shortly thereafter and her five natural children became entitled on her earnings record since it yielded the larger benefit for each (and had the higher PIA). The benefits are determined as follows:

Mr. Jones: PIA \$201.30; maximum, \$302.00.

	Original	Adjusted
Ann Day	\$151.00	\$100.60
Bob Day	151.00	100.60
Sid Day	151.00	100.60
Total		\$301.80

Mrs. Jones: PIA, \$214.00; maximum, \$321.00, combined maximum, \$623.00.

	Original	Adjusted
Mary Jones	\$160.50	\$124.60
Peter Jones	160.50	124.60
Charles Jones	160.50	124.60
Marvel Jones	160.50	124.60
Ruth Jones	160.50	124.60
Total		\$623.00

738. Rounding of benefit rates.

738.1. Are benefit rates rounded?

Yes. Benefit rates must be rounded.

738.2. How are benefit rates rounded?

Calculations that are not a multiple of 10 cents are rounded to the next lower multiple of 10 cents. For example, \$100.18 is rounded down to \$100.10.

The monthly amount payable is rounded to the next lower multiple of \$1 if it is not already a multiple of \$1. For example, \$100.79 is rounded down to \$100.

If you are entitled to Medicare, the Part B premium is deducted before rounding the monthly benefit payable to the lower multiple of \$1.

CHAPTER 8

WHO ARE EMPLOYEES?

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INTRODUCTION

800. The extent of Social Security coverage.

800.1. Who are employees?

For Social Security purposes, you are considered an employee if:

- A. You are an officer of a corporation (see §§824-825);
- B. You meet the “common-law test” (see §§802-823); or
- C. You are in one of the four specific occupations described in §§826-830.

800.2. Why is employment status important?

Employees and the self-employed are treated differently under the Social Security program. It is important for you to know if you are an employee or a self-employed person for Social Security purposes because your tax rate could be affected.

801. Who is an employer?

For Social Security purposes, you are an employer if you have the final authority or **right** to control workers in performing their services, including hiring, firing, and supervising. In cases of doubt, the common-law test must be applied (See §§802-823).

THE COMMON-LAW TEST

802. The common-law test.

802.1. What is the common-law test?

Under the common-law test, the person you work for has the right to tell you what to do, how, when, and where to do your job. There are several factors, or elements, which indicate such control over the details of your work. These are discussed in §§804-823.

802.2. What if my relationship to my employer meets the common law test?

You are considered an employee if your relationship with your employer meets the common-law test. Even if your employer does not give you orders on what to do, how when, and where to do your job, he or she only needs the **right** to do so for you to be considered an employee.

803. Factors which show control.

803.1. How is evidence of control determined?

The factors, or elements, that show control over the details of work are discussed in §§804-823. These factors are weighed against and with

factors that point to an employer-employee relationship or an independent contractor status. It is important to note that **any single fact or small group of facts taken together is not necessarily evidence of control**. Determining evidence of control is based on a careful evaluation of all facts collectively.

803.2. *How much weight is given to the factors of control?*

The weight or amount of importance given to each factor is not always constant. Some factors are more important than others in determining evidence of control; also, the degree of importance changes by occupation. For example, some factors of control do not apply to certain occupations.

804. Are you required to follow instructions at work?

If you follow instructions about when, where, and how to work, then you are ordinarily considered an employee. Instructions on how to do your job can be provided verbally or in written format (e.g., manuals and written procedures). Even if your employer does not give you specific instructions because you are a good worker and can be trusted, he or she only needs the **right** to instruct you.

805. Are you trained on how to do your job?

If you are trained by an experienced employee, then a factor of control exists. Your training shows that your employer wants you to do your job in a particular way. This is especially true if your training is provided periodically or frequently. On the other hand, independent contractors usually do their jobs using their own approach. They also are not trained by purchasers of their services.

806. Are your services integrated in the business?

If your services are integrated into the business operations, a factor of control generally exists. Integration occurs when the services you perform merge with the scope and function of the business. If the job you do is critical to the success of the business you work for, you are subject to a certain amount of control by the business owner.

807. Do you personally perform your job functions?

If you personally do your job without the use of a substitute, a factor of control exists. This shows that your employer is interested in who does the job, how the job gets done, and the results. On the other hand, if you have the right to hire a substitute without your employer's knowledge, a lack of control may exist.

808. Who hires, supervises, and pays assistants?

If your employer hires, supervises, and pays assistants, control over all workers on the job generally exists. Sometimes, another worker may hire, supervise, and pay other workers at the direction of the employer. As long as the worker is acting as an employee in the capacity of a supervisor or a representative of the employer, control over workers on the job still exists. On the other hand, sometimes a worker hires, supervises, and pays other workers resulting from a contract under which materials and labor are provided for the attainment of a result. In this case, the worker is considered an independent contractor.

809. Is your work relationship continuing?

809.1. Does your working relationship continue with the person for whom you work?

If the working relationship continues between you and the person you work for, a factor of control generally exists. This relationship tends to indicate an employer-employee relationship.

809.2. How is an on-going working relationship determined?

If you are asked to work frequently on call or when work is made available, a continuing working relationship exists. This is true even under the following conditions:

- A. Services are requested at irregular intervals;
- B. Services are performed on a part-time basis;
- C. Services are obtained on a seasonal basis; or
- D. You only work a short time.

810. Do you have set hours at work?

If your employer has established a fixed work schedule for you, a factor of control exists. In this instance, you are not able to set your own hours, which is a right of an independent contractor. In some cases, fixed hours may not be practical because of the nature of your job. As long as you are required to work at certain times, an element of control still exists.

811. Do you devote full time to the business?

811.1. Do you work full time for the business of your employer?

If you work full time for your employer, a factor of control exists. Since your employer has control over the amount of time you spend working, you are restricted from doing other gainful work. On the other hand, an

independent contractor can choose for whom to work and when to work.

811.2. What does “full time” work mean?

Full time does not necessarily mean an eight-hour work day or a five-day work week. The meaning of “full time” may vary by the nature of your job, the customs where you live, and your intentions as well as those of your employer.

811.3. What if there is no verbal or written agreement specifying full time employment?

Although you may not have a formal agreement, full-time services may be required of you. For example, some workers are not contractually permitted to work for anyone else. Another example is a worker who has to meet a production minimum. This production minimum may require that the worker devote all working hours to the business. In the previous examples, the workers are considered full time employees.

812. Do you work on premises?

812.1. Do you work on your employer's premises?

If you work at your employer's place of business, it is implied that your employer has control. This is especially true if the type of work you do could be done elsewhere. Working at the employer's place of business places you under your employer's direction and supervision.

812.2. Do you work off your employer's premises?

Even if you do not work on your employer's premises, it does not necessarily mean that you are not an employee. Some occupations require services to be performed off premises. For example, employees of construction contractors must work off premises to perform their job duties.

813. Do you perform your job duties in the order or sequence set by your employer?

If you carry out your job duties in the order set by your employer, a factor of control exists. In this circumstance, you are not free to follow your own pattern of work. Instead, you must follow the established routines and schedules of your employer. Even if your employer does not set the order of your job tasks, he or she only needs the **right** to do so for control to exist.

814. Do you submit oral or written reports to your employer?

If you submit oral or written reports, a factor of control exists. The submission of reports shows that you are required to account for your actions.

815. Are you paid at specified intervals?

815.1. Are you paid by the hour, week, or month?

If you are paid at regular intervals, a factor of control exists. In addition, if you are guaranteed a minimum salary, or if you are compensated through a drawing account (provided that you are not required to repay earnings in excess of your approved draw), an employer-employee relationship tends to exist.

815.2. Are you paid by the job?

If you are paid by commission or on a job basis, you are likely an independent contractor. Payment by the job includes a lump sum. This lump sum is normally computed by the number of hours worked against a fixed rate per hour. The lump sum payment may be broken out into weekly or monthly installments if this method of payment is convenient for a particular job.

816. Does your employer pay your business and traveling expenses?

If your employer pays your business and traveling expenses, a factor of control exists. On the other hand, a lack of control may exist if you are paid on a job basis and you are responsible for business and traveling expenses.

817. Are you provided with tools, materials, etc., to do your job?

If your employer furnishes the various materials needed to do your job, a factor of control exists. On the other hand, furnishing your own tools, materials, and equipment may indicate a lack of control, unless it is common for employees in your field to use their own hand tools.

818. Do you invest in the facilities you use to do your job?

Facilities generally include the equipment or premises necessary for work. If your employer provides all necessary facilities, you are generally considered an employee. On the other hand, if you invest in the equipment and premises necessary for work, you tend to be an independent contractor. Note that the tools, instruments, clothing, etc.

that you may provide as a common practice in your particular field is not considered an investment in facilities.

819. Do you have the opportunity for profit or loss?

819.1. Are you in a position to realize a profit or suffer a loss resulting from your services?

If you have an opportunity for profit or loss resulting from your services, you are generally considered an independent contractor. If you are not in such a position, you are likely to be considered an employee.

819.2. How is the opportunity for profit or loss established?

Opportunity for profit or loss may be established by one or more circumstances. Examples of such circumstances are if a person:

- A. Hires, direct, and pays assistants;
- B. Has his or her own office, equipment, materials, or facilities for doing work;
- C. Has continuing and recurring liabilities or obligations;
- D. Succeeds or fails depending on the relation of receipts to expenditures;
- E. Agrees to perform specific jobs for prices agreed upon in advance; and
- F. Pays expenses incurred in connection with work performed.

820. Do you work for more than one person or firm at the same time?

If you work for a number of people or businesses at the same time, you are usually considered an independent contractor. As such, you are free from control by the people and businesses for which you work.

However, it is possible that a person who works for several people or businesses may still be considered an employee of one or all of them.

821. Do you make your services available to the general public?

If the services you perform are made available to the general public, you are usually considered an independent contractor. Services are made available to the general public by independent contractors in a variety of ways:

- A. They may have their own office and assistants;
- B. They may hang out a “shingle” in front of their home or office;
- C. They may hold business licenses;

- D. They may be listed in business directories;
- E. They may maintain business listings in telephone directories; or
- F. They may advertise in newspapers, trade journals, magazines, etc.

822. Can you be fired?

822.1. Does your employer have the right to fire you?

If your employer has the right to fire you, a factor of control exists, indicating an employer-employee relationship. On the other hand, independent contractors cannot be fired provided that they meet their contractual requirements.

822.2. Do labor union restrictions on firing affect the employer-employee relationship?

Sometimes an employer's right to fire is restricted because of a contract with a labor union. This restriction does not affect the existence of an employment relationship.

823. Do you have the right to end your relationship with your employer at any time?

If you can end the relationship with your employer at any time without liability, you are generally considered an employee. An independent contractor usually agrees to complete a specific job before ending the work relationship. An independent contractor is also personally and legally responsible for satisfactory completion of the job.

824. Corporate officers are ordinarily employees.

824.1. Are corporate officers employees of the corporation?

Yes. If you are a corporate officer, you are normally considered an employee of the corporation.

824.2. Are directors employees of the corporation?

If you are the director of a corporation, you are **self-employed** for any service you perform as director.

824.3. What if a director performs non-directorial services?

If you perform services outside the scope of your role as director, then you are considered an employee of the corporation for those services.

825. What is a corporation?

825.1. How does an association classify as a corporation?

The term "corporation" applies to associations of several people in a joint business effort. In this context, corporations do not necessarily

require a corporate charter. Corporations have each of the following characteristics that make them different from other organizations:

- A. Management is centralized. A certain number of associates, acting as a board of directors, controls the association regarding how business is conducted;
- B. The organization continues uninterrupted upon the death of an owner or a change in share ownership;
- C. The organization's members have the absolute right to dispose of their interests in the organization;
- D. The organization intends to continue growing as a business; and
- E. No associate is personally liable for debts incurred that exceed the organizations assets.

If an association meets these conditions, it is classifiable as a corporation. Therefore, members who perform duties similar to those of officers of a corporation are considered employees.

825.2. Are partners considered employees of the partnership?

Partners are generally not employees of either the partnership or any of the partners of the business. However, a partnership can be classified as a corporation if it meets conditions (A) - (E) above. If a partnership can be classified as a corporation, partners who perform duties similar to those of officers of a corporation are considered employees.

825.3. Are officers and employee-shareholders of S Corporations considered employees?

Yes. Officers and employee-shareholders of S Corporations are employees of the corporation. Compensation for their services is wages paid by the corporation.

EXCEPTIONS TO THE COMMON-LAW TEST

826. Certain workers are employees if the common-law test is not met.

826.1. Are you considered an employee even if you do not meet the common law test?

If you work in one of the four occupational groups set out in §§827-830, you are an employee for Social Security purposes even if you do not meet the common-law test as long as:

- A. Your work contract expects that you will do mostly all of the work;

- B. You have no substantial investment in the facilities used to do your work (except for tools, equipment, transportation, or clothing employees you usually provide); and
- C. You have an on-going work relationship with the person for whom you work.

826.2. *Does it matter if the work contract is oral versus written?*

No. The contract of service may be oral or written. The important issue in the contract is that you have no authority to delegate a substantial amount of your work to another person. However, there are cases where you might occasionally hire a substitute or assistant and still be an employee under this test. What is important is that it is intended that you perform the essential services of your job.

826.3. *What does it mean to have a substantial investment in facilities?*

A substantial investment in facilities would be the investment of items such as office furniture, fixtures, premises, and machinery. A salesperson who maintains a home office may not have substantial investment; however, a salesperson with an office elsewhere would be considered to have a substantial investment in facilities.

826.4. *Are items workers have or use to do their jobs considered an investment in facilities?*

Your investment in your education, training, tools, instruments, clothes, or vehicle (used to go to and from work) are not considered a substantial investment in facilities.

826.5. *What is meant by an “on-going work relationship”?*

You have an on-going work relationship if you work regularly and frequently work for your employer. Regular part-time work and regular seasonal work are considered on-going. On the other hand, a single job transaction, even if it covers a considerable period of time, is usually not part of an on-going relationship.

827. Agent-drivers or commission-drivers.

827.1. *Are agent-drivers or commission-drivers employees?*

If you meet the requirements in §826 and distribute any of the following items, you are considered an employee:

- A. Meat or meat products;
- B. Vegetables or vegetable products;
- C. Fruit or fruit products;

- D. Bakery products;
- E. Beverages (other than milk); or
- F. Laundry or dry cleaned clothing.

827.2. *When are agent-drivers or commission-drivers NOT employees?*

You must perform the services for the person engaging them to be considered an employee. If you buy merchandise on your own behalf and sell it to the public as part of your own independent business, you are not considered an employee. In addition, if you distribute items that are not incidental to handling items (A) - (F) above, you are not considered an employee.

827.3. *Does how the driver operates affect employee status?*

Several factors do not affect your employee status as an agent-driver or commission-driver:

- A. You may sell at wholesale or retail;
- B. You may operate from your own truck or from a company truck;
- C. You may serve customers designated by the company or solicit your own;
- D. You may distribute other products provided that the handling of these products is incidental to the handling of items A - F above; and
- E. You may be compensated in any manner. How you are compensated is immaterial.

828. Full time life insurance salespersons.

828.1. *Are full time life insurance salespersons employees?*

You are considered an employee if you:

- A. Meet the requirements in §826;
- B. Solicit life insurance or annuity contracts as your entire or principal business activity; and
- C. Work primarily for one life insurance company.

You should be provided with office space, stenographic help, telephone facilities, form, rate books, and advertising materials by the company or general agent.

828.2. *Is the employment contract important?*

Generally, the employment contract reflects the intention of you and the company regarding “full-time” work. How much time you spend

working is not important. What is important is the contractual intent of full-time work. You may work regularly only a few hours a day yet still qualify as a full-time life insurance salesperson if your contract intends that you engage in full-time activity.

828.3. *What does it mean to be a “principal business activity”?*

A “principal business activity” takes the major part of a salesperson's working time and attention. This means that your efforts must be devoted primarily to the solicitation of life insurance or annuity contracts. Occasional or incidental sales of other types of insurance (e.g., surplus-line insurance) do not affect this requirement. On the other hand, if you are required to work substantially on selling applications for insurance contracts other than life insurance (e.g., health, accident, fire, etc.), you do not meet the requirement.

829. Full time traveling or city salespersons.

829.1. *Are full time traveling or city salespersons employees?*

You are considered an employee if you:

- A. Meet the requirements in §826;
- B. Solicit orders for merchandise on behalf of another person or firm as your principal activity;
- C. Obtain your orders from businesses whose primary function is the furnishing of food and/or lodging (e.g., wholesalers, retailers, contractors, hotel and restaurant operators); and
- D. Sell merchandise that is bought for resale or use as supplies in your customer's business operations.

“Full-time” means that you work primarily for one person or business. It does not matter how much time you spend on the job.

829.2. *What types of salespersons are NOT considered employees?*

Manufacturers representatives and multiple-line salespersons that work for a number of firms are usually not considered employees.

830. Homeworkers.

830.1. *Are homeworkers employees?*

You are considered an employee if you:

- A. Meet the requirements in §826;
- B. Work away from the employer's place of business;
- C. Work according to your employer's guidelines;

- D. Work on material or goods provided by your employer; and
- E. Return the finished product to your employer or to someone whom your employer designates.

830.2. *What type of worker is considered a “homeworker”?*

Homeworkers include people who make quilts, buttons, globes, bedspreads, clothing, needlecraft products, etc. Homeworkers usually work in their own homes or in a workshop away from their employer's business. The type of work homeworkers do is usually simple and consists of following patterns or samples provided by the employer.

830.3. *How is compensation computed for Social Security purposes?*

If you receive wages less than \$100 in a calendar year (the cash-pay test) from your employer, your pay is not counted for Social Security purposes. However, all of your pay is counted in applying the earnings test to a beneficiary, even if you do not meet the cash-pay test. If you do meet the cash-pay test, all of your pay is counted for benefits and the earnings test. (See §1303.)

831. *Are farm crew workers employees of the crew leader or the farm operator?*

Farm crew workers are employees of the crew leader if the crew leader:

- A. Arranges with the farm operator to provide workers;
- B. Pays the workers either on his or her own behalf or on behalf of the farm operator; and
- C. Is not the farm operator's employee in a written agreement with the farm operator.

If items (A) - (C) above are met, the crew leader is self-employed. He or she is responsible for the payment of employment taxes and for reporting the farm crew workers for Social Security purposes.

If an agreement has been entered into in writing that the crew leader is an employee of the farm operator, all crew member are also **employees of the farm operator**. If the crew leader does not pay the workers and has not entered into a written agreement, the common-law test (see §§802-823) is applied. The common-law test determines the identity of the employer of the workers and the status of the crew leader.

CHAPTER 9

SPECIAL COVERAGE PROVISIONS

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900. Does Social Security cover most types of work?

Most types of employment in the U.S. are covered by Social Security. Some work, however, is specifically excluded by the law. Other types of work are covered only under certain conditions. This Chapter explains what employment is not covered by Social Security and what conditions must be met before certain types of employment otherwise excluded can be covered. The special coverage provisions for employment for State and local governments are explained in Chapter 10

901. Is agricultural labor covered by Social Security?

Most types of agricultural labor are covered by Social Security. However, only cash pay (as defined in §1303) for your farm work is counted as wages for Social Security purposes, and only if either:

- A. The cash pay was paid to you by your employer whose expenditures for agricultural labor are \$2,500 or more; or
- B. The cash pay paid to you in a calendar year for agricultural labor by one employer amounts to \$150 or more (the cash-pay test) if your employer spends less than \$2,500 in the year for agricultural labor.

902. How is the cash-pay test applied?

In applying the cash-pay test, payments are credited as wages for Social Security purposes at the time your wages were **paid**. Therefore, if you were paid \$150 in 1980 for agricultural labor, the entire \$150 is counted as wages for 1980, even though part or all of the work may have been done in 1979.

903. What is a farm?

A “farm” includes:

- dairy
- fruit
- fur-bearing animal farms
- nurseries
- orchards
- plantations
- poultry
- ranches
- ranges
- truck farms

- stock

The term also includes greenhouses (except those used primarily for display or storage purposes or for making wreaths or bouquets) and other similar structures that are used primarily for the raising of agricultural or horticultural commodities.

904. What types of farm work are considered agricultural labor?

If you do agricultural labor on a farm, you are covered by Social Security if your work is performed in connection with:

- A. Cultivating the soil; or
- B. Raising or harvesting any agricultural or horticultural commodity (this includes the raising, shearing, feeding, caring for, training and/or management of livestock, bees, poultry, and fur-bearing animals and wildlife).

905. What are “agricultural and horticultural commodities”?

Agricultural or horticultural commodities raised for sale or for home use include:

- A. Food crops (such as nuts, fruits, mushrooms, vegetables, and grain);
- B. Flowers, cut flowers, trees, and shrubbery;
- C. Animal feed or bedding, grass, vegetable, and cereal seed; and
- D. Other crops (such as flax, cotton, tobacco, tung nuts, and medicinal herbs raised for sale or for home use.)

906. What types of work include cultivating, raising, and harvesting?

Cultivating, raising, and harvesting may include the following:

- A. The actual cultivation of the soil;
- B. The raising or harvesting of a commodity; or
- C. An activity, such as irrigating crops, cutting of top soil, spraying or dusting, that is done in connection with such operations.

907. What types of work are not considered “raising”?

The term “raising” does not include service in potting, watering, heeling, or otherwise caring for trees, shrubbery, plants, etc., that are purchased in salable condition for the purpose of quick resale. However, if you keep these commodities long enough for them to grow and appreciate, the work in caring for them is agricultural labor.

908. What types of work are considered “harvesting”?

The term “harvesting” includes work usually performed as part of harvesting, such as: baling hay, shredding fodder, shucking and shelling corn, baling flax straw, hulling almonds, coarse grinding of alfalfa, and threshing small grains before storage. Horticultural commodities such as flowers, trees, shrubbery, and plants are harvested when they are taken up for sale or storage.

909. What types of work are considered “agricultural labor”?

“Agricultural labor” is work performed with the operation, management, conservation, improvement, or maintenance of a farm and its tools and equipment. Salvaging timber or clearing land of brush and other debris left by a hurricane is also agricultural labor. The following conditions are required for work to be considered agricultural labor:

- A. You must work in the employ of the owner, tenant, or other operator of the farm; and
- B. The major part of your work is done on the farm.

Note: Work done in the wholesaling or retailing of raw or unmanufactured farm products (including displaying, actual selling, collecting, and depositing of sales receipts and the clerical and other work in connection with the selling of the products) is agricultural labor if the farm operator raised over one-half of the products sold, and the major part of the work is done on a farm.

910. Is work performed in crude gum production covered by Social Security?

Crude gum production involves producing and harvesting crude gum from a tree, and processing crude gum into gum spirits of turpentine and gum rosin by the original producer of the crude gum. If you perform this type of work, you are covered by Social Security.

911. Is work performed in connection with cotton ginning covered by Social Security?

Work done in connection with cotton ginning is agricultural labor. Therefore, it is covered by Social Security.

912. Work in connection with waterways, ditches, etc.

912.1. Is work in connection with the normal upkeep of an existing water system covered by Social Security?

Work you do in connection with the ordinary upkeep, repair, and replacement of an **existing water system** is agricultural labor. Therefore, it is covered by Social Security provided that the waterways, ditches, canals, etc.:

- A. Are not owned or operated for profit; and
- B. Are used exclusively for supplying and storing water for farm purposes.

912.2. What if work is done in connection with a new water system. Is it covered by Social Security also?

Work you do in connection with the construction of a **new system or the extension of an existing system** is not agricultural labor. Therefore, it is not necessarily covered by Social Security.

913. Processing or packaging of agricultural commodities.

913.1. Is processing or packaging of an agricultural commodity covered by Social Security?

Work in connection with the processing or packaging of any agricultural commodity in its raw or unmanufactured state is covered by Social Security as agricultural labor if:

- A. The work is not performed in connection with the commercial canning or freezing of the commodity;
- B. The work is not performed after the delivery of the commodity to a terminal market for distribution for consumption; and
- C. The work is performed in the employ of:
 - 1. A farm operator who produced more than one-half of the agricultural commodity being processed or packaged in a pay period; or
 - 2. An unincorporated group of farm operators who:
 - a. Do not number more than 20 at any time during the calendar quarter, before 1978, in which the work was performed, or, after 1977, during the calendar year in which the work is performed;
 - b. Are not a farmers' cooperative; and
 - c. Produce all of the agricultural commodity being processed or packaged in a pay period.

913.2. *Is the work involved in getting commodities to market covered by Social Security?*

Activities performed to get commodities to market include: handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market. If you perform such activities in connection with an agricultural or horticultural commodity, the work you do is considered agricultural labor if the conditions in (A)-(C) above apply.

913.3. *What if work changes a commodity from its raw or natural state?*

If you process commodities in such a way that the work you perform changes them from their raw or natural state, the work you do is not agricultural labor. Likewise, any work you perform on a commodity after it has been changed from its raw or natural state is not agricultural labor.

914. *Are foreign agricultural workers in the U.S. covered by Social Security?*

You are not covered by Social Security if you are a foreign worker lawfully admitted to the U.S. on a temporary basis to perform agricultural work.

915. *Domestic service in private home of employer.*

915.1. *Is domestic service covered by Social Security?*

Domestic service in the private home of the employer is covered by Social Security beginning with 1955. Only cash pay (as defined in §1303) for this work is counted for Social Security purposes. Prior to 1994, only the cash pay paid to the domestic worker in the calendar quarter by the employer amounting to \$50 or more counts for Social Security purposes.

915.2. *What is the minimum amount that must be earned for domestic work to be covered by Social Security?*

Beginning in 1994, rules for coverage of domestic services performed in the private home changed. The table below shows the minimum you must earn for Social Security purposes.

Minimum Cash Pay for Social Security Coverage

Calendar Year	Minimum Cash Pay
1994	\$1,000
1995	\$1,000
1996	\$1,000
1997	\$1,000
1998	\$1,100
1999	\$1,100
2000	\$1,200
2001	\$1,300

For calendar years after 1998, the earnings threshold will adjust in multiples of \$100 in a given year, as average wages adjust.

915.3. What if the domestic worker is under age 18?

Beginning in 1995, any portion of a year that you work in a private home while you are under 18 years old, you are excluded from Social Security coverage. However, if the service is your principle occupation, you may be covered by Social Security.

915.4. How does the cash-pay test apply if the domestic worker has more than one employer?

If you perform domestic services for more than one employer, the cash-pay test applies separately to the cash pay paid by each employer. You cannot combine cash payments for a calendar quarter or a calendar year from various employers.

915.5. How is domestic service on a farm considered for Social Security purposes?

Your domestic service on a farm operated for profit is considered “agricultural labor” **for services rendered prior to 1995**. The agricultural labor cash-pay test, described in §900, must be met before cash wages paid for your employment can be considered covered for Social Security purposes.

Beginning in 1995, domestic work on a farm operated for profit is no longer treated as agricultural employment. You are subject to a new domestic threshold.

916. Domestic service defined.

916.1. What does “domestic service” mean?

“Domestic service” means work normally performed as an essential part of household duties. Domestic service contributes to the maintenance of the employer's residence or administers to the personal wants and comforts of the employer, other members of the household, and guests.

916.2. What kind of work is included under domestic service?

In general, domestic service includes work performed by:

- baby sitters
- butlers
- caretakers
- chauffeurs of family automobiles
- companions
- cooks
- footmen
- furnacemen
- gardeners
- governesses
- grooms
- handy men
- housekeepers
- housemen
- janitors
- laundresses
- maids
- nursemaids
- seamstresses
- valets
- waiters
- waitresses
- watchmen

917. Private home defined.

917.1. What is a “private home”?

A “private home” is the fixed place of residence of one or more people. Any shelter used as a dwelling may, depending on the circumstances, be considered as a private home. For example, a tent, boat, trailer, or a room or suite in a hospital, hotel, sanatorium or nursing home may all be considered private homes. A cooperative boarding and lodging facility may be a private home. Company-operated facilities are **not** private homes

917.2. Is an apartment house considered a private home?

In an apartment house, each apartment together with its private stairways, halls, and porches, etc. is a private home. Parts of the premises devoted to common use, such as the office, furnace-room, lawns, public stairways, halls, and porches are not a part of the private home.

917.3. Is a house used for room and board considered a private home?

If a house is used mainly as a commercial rooming or boarding house, only that part of the house that is used as the operator's living quarters is considered to be a private home.

917.4. Do domestic workers who work in a property being rented as a private home work in the private home of the employer?

If you are a domestic worker employed by landlords or rental agencies to do work in or about property being rented as a private home, you are not performing work in the private home of the employer.

918. Special provision for reporting wages paid to domestics.

918.1. Are there special provisions for domestic employees for reporting wages?

For Social Security tax reporting purposes only, your cash wages paid for domestic service in the private home of your employer may be rounded to the nearest dollar. This simplifies computation of the Social Security tax. For example, you are paid daily and your cash pay is \$22.50, your payment is considered \$23 for reporting purposes. Similarly, a payment amounting to \$22.49 is reduced to \$22. Also rounding to the nearest dollar is permitted if you are paid on a weekly, semimonthly, or monthly basis.

918.2. Does the rounding method need to be applied consistently?

Yes. If you use the rounding method of reporting for any pay period in a calendar quarter, you must use it consistently throughout the calendar quarter.

919. Is domestic service by a student for a college club, fraternity, or sorority covered by Social Security?

If you are a student performing domestic service for a local college club, fraternity, or sorority, you are not covered by Social Security if:

- A. You perform the domestic service in or about the club rooms or house; and
- B. You are enrolled in a school, college, or university, and you regularly attend classes there.

920. Local college club defined.

920.1. What is a local college club?

A “local college club” is made up of members who are mainly students enrolled in the college, or people directly connected with the college. The membership of a local chapter of a college fraternity or sorority must be composed mostly of students enrolled in the college. However, the fact that a local college club or local chapter of a college fraternity or sorority has some alumni or faculty members is immaterial.

920.2. Is an alumni club or alumni chapter considered a college club?

No. An alumni club or alumni chapter of a fraternity or sorority is not considered a college club or chapter.

921. Service by a student for a school, college, or university.

921.1. Is work done by a student for a school, college, or university covered by Social Security?

If you are a student working for a school, college, or university, you are not covered by Social Security provided that:

- A. You are enrolled at the school, college, or university where you are working; and
- B. You are regularly attending classes. (See §1002(F).)

For application of this rule to students enrolled in Work-Study Programs, see §946.)

921.2. Is work done by a student after 1972 for a private, nonprofit auxiliary organization of a school, college, or university covered by Social Security?

If you are a student working for a private, nonprofit auxiliary organization of your school, college, or university after 1972, you are not covered by Social Security provided you meet the conditions of (A) and (B) above. Also, the auxiliary organization must be:

- A. Organized and operated for the benefit of, to perform the functions of, or to carry out the purposes of the school, college, or university;
- B. Operated, supervised, or controlled by or in connection with the school, college, or university; and
- C. Operated by a State or local government, unless the terms of the agreement between the State and the Department of Health and Human Services cover the services performed by its student employees.

922. Is work by a student nurse covered by Social Security?

Your work as a student nurse for hospital or nurses' training school is not covered by Social Security, provided that:

- A. You are enrolled at the hospital or nurses' training school;
- B. You are regularly attending classes; and
- C. The hospital or nurses' training school is chartered or approved under State law.

Your work is excluded from coverage although the work of other employees of the hospital or nurses' training school is covered by Social Security. (See §1002 (F).)

923. Is work as an intern for a hospital covered by Social Security?

If you work as an intern for a hospital, you may or may not be covered by Social Security depending upon the type of hospital for which you work:

- A. If you work for a **privately owned and operated hospital**, then you are covered by Social Security (see §931);
- B. If you work for a **Federal hospital**, then your work is covered on the same basis as the work of other Federal employees; or
- C. If you work for a **State or local government hospital**, your coverage depends on whether your position is in a group covered by the Federal-State agreement. If your position is covered by the Federal-State agreement, you are covered. If your position is not

covered, you are subject to rules of coverage under Section 210 of the Social Security Act. (See §1000 for information on a Section 218 agreement).

924. Employment not in the course of the employer's trade or business.

924.1. Is non-business work covered by Social Security?

Work done that is not in the course of your employer's trade or business (non-business work) may be covered by Social Security. Only cash pay (as defined in §1303) for this type of work may be counted for Social Security purposes. Also, you must be paid at least \$100 in a calendar year to be considered for coverage.

924.2. How is the cash-pay test applied if work is done for more than one employer?

If you do non-business work for more than one employer, then apply the cash-pay test individually to the cash pay from each of your employers.

924.3. Is non-business on a farm covered by Social Security?

Non-business work on a farm operated for profit is considered agricultural labor. You must meet the agricultural labor cash-pay test set out in §901 before your cash wages can be counted for Social Security purposes.

925. Work not in course of employer's trade or business defined.

925.1. What is "non-business work"?

Non-business work is "work not in the course of the employer's trade or business." Any type of work that does not promote or advance the business of your employer is non-business work. For example, work relating to your employer's hobby or recreational activities, or work repairing your employer's private home would be considered non-business work.

925.2. Can work for a corporation be considered non-business work?

No. Any work you do for a corporation can never be considered non-business work or, "work not in the course of the employer's trade or business."

926. What types of family employment are not covered by Social Security?

Some types of family employment are not covered by Social Security. You are not covered by Social Security if you meet any of the following conditions. You are:

- A. A child under age 18 working for your parent(s) (beginning January 1, 1988);
Note: Prior to January 1, 1988, a child, under age 21, in the employ of a parent.
- B. A child age 18 to 21 working for your parent(s), but not performing work in the course of your parent's trade or business (beginning January 1, 1988);
- C. A husband working for your wife, but not performing work in the course of your wife's trade or business (beginning January 1, 1988);
- D. A wife working for your husband, but not performing services in the course of your husband's trade or business (beginning January 1, 1988); or
- E. A parent working for your son or daughter performing:
 - 1. Domestic service in or about the private home of your son or daughter (see §927 for exception); or
 - 2. Work not in the course of your son's or daughter's trade or business.

927. Is domestic work by a parent for a son or daughter covered by Social Security?

Beginning January 1, 1968, you are covered by Social Security if you are a parent doing domestic service for your son or daughter in or about his/her private home, and:

- A. There is a genuine employment relationship between you and your son or daughter;
- B. Your son or daughter has a child living in his/her private home who is either: (1) under age 18; or (2) if older than 18, has a mental or physical condition requiring personal care and supervision by an adult. Adult care and supervision must be needed for at least four continuous weeks in the calendar quarter in which you perform domestic service; and
- C. Your son or daughter is either:
 - 1. A widow or widower;
 - 2. Divorced and has not remarried; or

3. Has a spouse living in the home that has a physical or mental condition that renders him or her incapable of taking care of the child. Adult care and supervision must be needed for at least four continuous weeks in the calendar quarter in which you perform domestic service.

Note: The term “child” includes an adopted child, a stepchild, or a foster child.

928. What types of family employment is covered by Social Security?

The family employment exclusion does not apply to work you perform for either:

- A. A corporation or an association classifiable as a corporation. This is true even though the relationship set out in §926(A), (B), (C), or (D) exists between you and the person or persons controlling the corporation; or
- B. A partnership, unless the relationship in §926(A) exists between you and each of the partners.

929. Delivering or distributing newspapers.

929.1. What are “newspapers” and “shopping news”?

“Newspapers or shopping news” includes news publications, shopping guides, handbills, and other types of advertising material.

929.2. What does “delivery” or “distribution” mean?

“Delivery or distribution” means retail sale, house-to-house delivery, or the passing out of handbills on the street.

929.3. Are newspaper deliverers covered by Social Security?

Effective January 1, 1996, you are not covered by Social Security if you deliver or distribute newspapers or shopping news. You are considered a direct seller and your payment constitutes earnings from self-employment. See §1135.2 for further information on the treatment of these earnings as self-employment income. This exclusion does not apply to the delivery or distribution of magazines.

929.4. When were newspaper delivery services excluded from Social Security coverage prior to 1996?

Prior to January 1, 1996, delivery services were excluded from Social Security coverage if:

- A. The work was performed as an employee and the person was under age 18; and

- B. The material was delivered or distributed to the ultimate consumer and not to a point from which later distribution or delivery was made.

This exclusion does not apply to the delivery or distribution of magazines.

930. Are vendors of newspapers and magazines covered by Social Security?

If you sell newspapers or magazines, you are not covered by Social Security if:

- A. A. The magazines or newspapers are sold:
1. To the ultimate consumer; and
 2. At an arranged fixed price; and
- B. Your pay is the difference between the fixed selling price of the newspapers/magazines and the amount at which they are charged to you whether or not:
1. You are guaranteed a minimum wage for your services; or
 2. You are entitled credit for any unsold newspapers or magazines which are turned back.

If you are 18 or over, your work is covered by Social Security as “self-employment” under a special provision of the law.

If you are under 18 and you work in an independent capacity and not as an employee, the work may be covered by Social Security as self-employment.

931. Work for nonprofit religious, charitable, educational, etc. institutions.

931.1. Is work performed before January 1, 1984, for a nonprofit religious, charitable or educational organization covered by Social Security?

Work you performed prior to January 1, 1984, for a nonprofit religious, charitable, educational, or other organization exempt from income tax (under section 501(a) of the Internal Revenue Code) is not covered by Social Security.

Note: If the organization waived its exemption from Social Security taxes by filing a waiver certificate and a list of concurring employees, then you may be covered by Social Security. The organization can terminate Social Security coverage by giving two years' advance notice, if coverage had been in effect for eight years or more.

931.2. *Is work performed on January 1, 1984 or later for a nonprofit religious, charitable or educational organization covered by Social Security?*

Beginning on January 1, 1984, work you perform for a nonprofit religious, charitable, educational or other organization is covered by Social Security. You are covered for work done on or after January 1, 1984, even if you previously terminated coverage.

Note: Since 1982, nonprofit organizations may not terminate coverage of employees.

931.3. *Can nonprofit religious, charitable or educational organizations elect to be excluded from Social Security coverage?*

A church or qualified church-controlled organization, opposed for religious reasons to payment of Social Security taxes, may elect to have services performed by their employees (beginning January 1, 1984) excluded from the definition of employment for Social Security purposes. Organizations in existence when the legislation was passed had to elect before October 31, 1984. Other organizations must elect before the date that the first quarterly tax return is due.

931.4. *How are services of employees of a church/organization that elected to be excluded from Social Security coverage considered?*

If you work for a church/organization that is excluded from the definition of employment for Social Security purposes, your work is treated as services performed in a trade or business. Your work is covered as self-employment (see §1136), provided payment for your work in a calendar year is \$100 or more as required prior to 1984.

Note: Employees of a nonprofit organization required by law to be subject to the Civil Service Retirement System (such as the Legal Services Corporation) are treated like Federal civilian employees for Social Security coverage purposes.

932. Ministers and members of religious orders.

932.1. *Are services of ministers and members of religious orders covered by Social Security?*

Your services as a minister or member of a religious order are covered by Social Security as **self-employment** if:

- A. You performed the services after 1967;
- B. You are/were a duly ordained, commissioned, or licensed minister of a church in the exercise of your ministry or by a member of a religious order not under a vow of poverty;

C. You did not elect to be exempt from Social Security coverage (see §§1131-1132).

932.2. *Can work performed by a minister or member of a religious order, under a vow of poverty, be covered by Social Security?*

You may be covered by Social Security if the religious order has elected to have services performed by its members covered by Social Security.

932.3. *How does a religious order elect to have the work of its members covered by Social Security?*

To elect coverage, the order or subdivision of the religious order must file Form SS-16 (*Election of Covered Wages for Members of Religious Order Under Vow of Poverty*) with the Internal Revenue Service.

932.4. *If a religious order is covered by Social Security, what do the members' covered wages include?*

If are a member of a religious order that is covered by Social Security, your covered wages are the fair market value of any board, lodging, clothing, or other perquisites furnished by the order. Your wages must not be less than \$100 a month in order to be covered by Social Security.

933. *How is work that is not in the exercise of the ministry treated for Social Security purposes?*

Work you perform that is not in the “exercise of the ministry or duties required by a religious order” is treated the same as the work of any other employee. You are covered or excluded from Social Security on the same basis as any other employee for the religious order.

934. *What is an “ordained”, “commissioned”, or “licensed” minister?.*

You are an “ordained”, “commissioned”, or “licensed” minister if you have been vested with ministerial status according to the procedure followed by your particular church's denomination. You do not have to be connected with a congregation. Your ministerial authority continues until it is revoked by your church.

Some churches have formal ordination procedures. For Social Security purposes, your commissioning or licensing as a minister must be recognized by your church as an ordination if your church follows such procedures.

935. *What does “exercise of the ministry” mean?*

The term “exercise of the ministry” includes the following activities:

- A. The conduct of religious worship and the ministration of sacerdotal functions;

- B. Service performed in the control, conduct, and maintenance of:
1. A religious organization under the authority of a religious body constituting a church or church denomination; or
 2. An organization operated as an integral agency of a religious organization, church, or church denomination.

Note: Control, conduct, and maintenance of an organization does not include work such as operating an elevator or being a janitor. It refers to work in directing, managing, or promoting the activities of the organization.

- C. Service performed for any organization under an assignment or designation by a church; or

Note: This does not include cases in which a church merely helps by recommending a minister for a position involving non-ministerial services for an organization not connected with the church.

- D. Missionary service or administrative work for a missionary organization.

936. Are crews on fishing boats covered by Social Security?

If you are a member of a fishing boat crew or work on boats engaged in catching fish or other forms of aquatic life (such as shrimps or lobsters), you are considered self-employed. (See §1134 for special conditions.)

937. Employment for a foreign government, international organization, or instrumentality of a foreign government.

937.1. Are employees for foreign governments, international organizations or instrumentalities of a foreign government covered by Social Security?

Your work as an employee of a foreign government or of an international organization is not covered by Social Security as employment. The same rule applies to work for a wholly owned instrumentality of a foreign government that exempts similar work if performed in that country by U.S. employees. (See §938 for treatment of work by U.S. citizens in the U.S. for foreign governments, international organizations, etc.)

937.2. Are employees who participate in FERS or FSPS excluded from Social Security coverage?

Beginning in 1995, the services you perform for an international organization as a Federal employee participating in the Federal Employees Retirement System (FERS) or Foreign Service Pension System (FSPS) are not excluded from employment. Your services are covered as employment by the Federal agency that transfers you. This includes employment outside and inside the United States.

938. Is work by U.S. citizens working in the U.S. as employees of foreign governments covered by Social Security?

Your work is covered as self-employment if you are a U.S. citizen working in the U.S. as:

- A. An employee of a foreign government;
- B. An employee of a foreign governments' wholly-owned instrumentality; or
- C. An employee of an international organization.

This provision and §937 do not change for Federal employees not under FERS or FSPS.

939. Foreign students or exchange visitors.

939.1. Is work by foreign students or exchange visitors covered by Social Security?

Work performed by foreign nonresidents temporarily admitted to the U.S. under sections 101(a)(15)(F), (J), (M), and (Q) of the Immigration and Nationality Act, as amended, is not covered by Social Security if:

- A. The work is performed to carry out the purpose(s) for which the foreign nonresidents were admitted to this country; or

Note: Work by a student or exchange visitor other than that performed to carry out the purpose for which he or she was admitted is not excluded from Social Security coverage. However, if the foreign nonresident has received special permission to work, then he or she may be excluded from coverage.

- B. Special permission to work has been granted by the Immigration and Naturalization Service (in the case of a student) or by the sponsor of an exchange visitor.

939.2. To what categories of visa holders does the Social Security exclusion apply?

The exclusion from coverage applies to four categories of visa holders:

F-1 Bona fide students admitted to pursue a course of study at an established school or other recognized place of study approved by the Attorney General;

J-1 Bona fide students, scholars, trainees, teachers, research assistants, or specialists, admitted to participate in a program designated by the Secretary of State for the purpose of teaching, consulting, demonstrating special skills, or receiving training;

M-1 Bona fide students at a vocational or training school; and

Q-1 Beginning October 1994, foreign exchange visitors admitted to participate in an international cultural exchange program for the purpose of providing practical training and sharing culture, history, and traditions of the visitor's country.

939.3. *Is work performed by a family member of a foreign exchange visitor covered by Social Security?*

Yes. Work performed by the spouse or child of an exchange visitor is covered by Social Security.

940. Employment as civilian for the U.S. Government.

940.1. *Are newly hired civilians for the U.S. Government covered by Social Security?*

If you were hired as a civilian employee for the U.S. Government on or after January 1, 1984, then you are covered by Social Security. Certain Federal officials are also covered.

Prior to 1984, most Federal civilian employment was exempt from regular Social Security coverage, but subject to the Hospital Insurance tax portion of the Federal Insurance Contributions Act beginning January 1, 1983.

940.2. *Which civilian workers are covered by Social Security?*

The following civilian positions are covered by Social Security:

A. Federal employees who on or after January 1, 1984:

1. Are hired for the first time;
2. Are hired after a separation exceeding 365 days from previous Federal employment (see §940.3 for exceptions);
3. Return to Federal employment after a separation of less than 366 days **and** the prior employment was subject to full Social Security coverage and taxation under the prior law; or

4. Were working for the Federal Government in a position subject to full Social Security coverage and taxation under the prior law (e.g., in the uniformed services or a temporary employee);

Note: Generally, work performed by re-employed Civil Service and other Federal annuitants, except retired members of the uniformed services, are specifically excluded from Social Security coverage other than Health Insurance coverage. Retired members of the Foreign Service who return to work for the Federal Government under temporary appointment (one year or less) as General Schedule employees, are subject to full Social Security coverage.

- B. Legislative branch employees who were not participating in the Civil Service Retirement System (CSRS) or another Federal civilian retirement system as of December 31, 1983;
- C. Legislative branch employees who were participating in the CSRS or another Federal retirement system (other than one for members of the uniformed services) on December 31, 1983, and
 1. Received lump-sum payments from the Federal retirement system after December 31, 1983; or
 2. Ceased to be subject to CSRS after December 31, 1983.

Note: Legislative branch employees covered by Social Security as a result of this provision who: (1) received or filed an application for a lump-sum payment before June 15, 1984, from a Federal retirement system; or (2) ceased to be subject to the CSRS after December 31, 1983, could be excluded from Social Security coverage if they joined the CSRS before August 18, 1984.

Note: Legislative branch employees who: (1) were hired after July 18, 1984, after a break in Federal service of less than 366 days; and (2) otherwise meet these requirements, could be excluded from Social Security coverage if they joined CSRS within 30 days after they were hired.

- D. Members of Congress, including Delegates and Resident Commissioners of or to the Congress;
- E. The President, the Vice President, and most executive-level political appointees. Generally, this includes positions as Cabinet heads, subcabinet members, independent agency top staff, commission members, and political appointees designated by the President with the advice and consent of the Senate; and
- F. Federal judges, magistrates, bankruptcy judges, and referees in bankruptcy. This does not apply to payment to retired senior status Federal justices and judges while actively performing judicial duties.

940.3. What are the exceptions to Social Security coverage for employees hired after a separation exceeding 365 days from previous Federal employment?

If you previously held a position not covered by Social Security and you meet any of the following conditions, you are not covered by Social Security:

- A. You return to non-covered Federal service after being detailed or transferred to service with certain international organizations;
- B. You return to non-covered service after separation to perform service with the American Institute in Taiwan; or
- C. You exercise restoration or reemployment rights after service as a member of a uniformed service (including service in the National Guard and temporary service in the Coast Guard Reserve).

940.4. How is employment for all Federal agencies and instrumentalities considered for Social Security purposes?

Employment for all Federal agencies and instrumentalities, including service as a member of the uniformed services, is considered as employment for the same employer.

940.5. What does the legislative branch consist of?

The legislative branch consists of the Congress, the Architect of the Capitol, the U.S. Botanic Garden, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, the Congressional Budget Office, and the Copyright Royalty Tribunal.

940.6. What type of work performed for the U.S. government is usually always NOT covered by Social Security?

Services that remain excluded from Social Security coverage includes work from the following:

- A. Inmate of a Federal penal institution;
- B. Interns, student nurses, and other student employees of a Federal hospital;
- C. Emergency employees serving on a temporary basis during certain emergencies;
- D. Many retired Federal judges (age 70 and above) who continue to remain on call to serve on the bench after retirement. These services would ordinarily be covered for Social Security purposes

but have been excluded by law for all services performed after December 31, 1983; and

- E. Certain students performing services for U.S. Army Corps of Engineers research and development laboratories. These services are excluded from Federal employment by section 2360 of the Armed Forces Act. Since they are excluded from employment, their payment for services is not covered services for Social Security tax purposes nor are they covered as independent contractors (self-employed individuals) since they are not in a trade or business.

941. Are employees for the District of Columbia covered by Social Security?

If you work for the District of Columbia and its wholly owned instrumentalities, including work as a substitute teacher in the District school system, you are covered by Social Security beginning October 1, 1965, unless:

- A. Your work is covered by a retirement system established by a law of the U.S.; or
- B. You are any of the following:
 1. A patient or inmate of a District of Columbia hospital or penal institution;
 2. A student employee of a District of Columbia hospital (including a student nurse, dietitian, and physical or occupational therapist but, not a medical or dental intern or resident in training);
 3. An employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergencies; or
 4. A member of a board, committee or council of the District of Columbia paid on a per diem, meeting, or other fee basis.

942. Are services performed under Federally sponsored economic and human development programs covered by Social Security?

Some services performed under federally sponsored economic and human development programs are covered by Social Security and others are not. In some instances, these services are designated by public law to be performed in the employ of the U.S. In other instances, these services may be covered as State and local government employment. They may also be considered employment by private nonprofit organizations.

Whether or not the services are covered by Social Security depends on the particular program and the identity of the employer for whom the

services are performed. A discussion of some of the major programs under which Social Security coverage may exist is contained in §§943-947.

943. Is work as a volunteer or leader in the peace corps covered by Social Security?

Your work as a volunteer or volunteer leader in the Peace Corps is covered by Social Security if:

- A. You are a citizen or national of the U.S.; and
- B. You enrolled in the Corps on or after September 22, 1961; or you had been engaged on that date by contract with the Peace Corps Agency established by Executive Order No. 10924 dated March 1, 1961.

944. Are job corps enrollees covered by Social Security?

The Job Corps program is funded by the Federal Government and is administered by the Department of Labor. If you are enrolled in the Job Corps, you are considered an employee of the Federal Government for Social Security purposes. The Secretary of Labor (or your designated agent) decides what pay constitutes wages and the periods that you are paid wages.

945. Is work for community service programs for older Americans covered by Social Security?

Community service programs for older Americans are generally assisted by State and local governments to provide services to older Americans. The Older Americans Act makes no provision regarding Social Security coverage. Social Security coverage questions are dependent on:

- A. The identity of your employer (whether or not the State or local entity has coverage provided under a Federal-State agreement); and
- B. The application of the common-law test (see §§802-823). This will determine if an employment relationship exists between you and the agency for which you work.

946. Are students enrolled in a work-study program covered by Social Security?

Students enrolled in the Work-Study Program funded under the Higher Education Act may be employed by private, State, or local colleges and universities, or for public or private nonprofit organizations. Your Social Security coverage depends on the identity of your employer.

If your work is performed for a State or local government agency, it may be covered under the agreement with the State if that State does not expressly exclude work performed by a student. (See §1002 (F).)

947. Volunteers in Service to America (VISTA) program.

947.1. Are Volunteers in Service to America (VISTA) covered by Social Security?

Volunteers in Service to America (VISTA) recruited to perform duties under the Domestic Volunteer Service Act may be covered as employees for Social Security purposes. If you are enrolled in a VISTA program for a period of service of at least one year, you are considered an employee of the U.S. Government. Your services (including training) are covered by Social Security.

947.2. How are decisions made concerning periods covered by wage payments?

Decisions concerning periods covered by wage payments are made by ACTION, an independent Federal agency.

948. Member of the U.S. uniformed service.

948.1. Are members of the U.S. uniformed service covered by Social Security?

Your work as a member of the uniformed service of the U.S. is covered by Social Security beginning January 1, 1957, if performed while on active duty or active duty for training. This work is not covered by Social Security during any period when you are on leave without pay, or if the work is creditable under the Railroad Retirement Act. (See Chapter 23)

948.2. Are members of the Armed Forces reserve covered by Social Security?

Your work as a member of the Armed Forces reserve, while on inactive duty training (such as weekend drills), is covered beginning January 1, 1988. This work is not covered by Social Security during any period when you are on leave without pay, or if the work is creditable under the Railroad Retirement Act. (See Chapter 23)

948.3. Before 1957, how is Armed Forces service credited for Social Security purposes?

Before 1957, the service of a member of the Armed Forces of the U.S. was not covered by Social Security. However, you may be given military service "wage credits" for Social Security purposes based on this service. (See §§954-960.)

949. Definition of member of a uniformed service.

949.1. Who is considered a “member of a uniformed service”?

You are considered a member of a uniformed service if you are any of the following:

- A. An appointed, enlisted, inducted, or retired member of:
 - 1. One of the armed services without a specified component; or
 - 2. A component of the Army, Navy, Air Force, Marine Corps, or Coast Guard, including any of the following Reserve components: the Army, Navy, Marine Corps, Air Force, or Coast Guard Reserve, the Reserve Corps of the Public Health Service, the U.S. National Guard, the Air National Guard of the U.S., and, under limited circumstances, the National Guard or Air National Guard of the States or the District of Columbia;
- B. A commissioned officer (including a retired commissioned officer) of the National Oceanic and Atmospheric Administration or the Regular or Reserve Corps of the Public Health Service;
- C. A member of the Fleet Reserve or Fleet Marine Corps Reserve;
- D. A midshipman at the U.S. Naval Academy, and a cadet at the U.S. Military, Coast Guard, or Air Force Academy;
- E. A member of the Reserve Officers' Training Corps and the Naval or Air Force Reserve Officers' Training Corps, when ordered to annual training duty for 14 days or more, and while performing authorized travel to and from that duty; or
- F. In route to or from a place of final acceptance for entry upon active military or naval service, provided that you:
 - 1. Were ordered or directed to proceed to such place; and
 - 2. Have been provisionally accepted for duty, or have been selected for active military, or naval service under the Universal Military Training and Service Act.

949.2. Is a temporary member of the Coast Guard Reserve considered a “member of a uniformed service”?

No. A temporary member of the Coast Guard Reserve is not considered a member of a uniformed service.

950. What does “active duty” mean?

“Active duty” means full-time duty (other than active duty for training) by a member of the uniformed services (as defined in §949) in the active military or naval service.

951. What does “active duty for training” mean?

“Active duty for training” means:

- A. Full-time duty performed by a member of a Reserve component of a uniformed service in the active military or naval service of the U.S. for training purposes;
- B. Full-time duty as a commissioned officer of the Reserve Corps of the Public Health Service for training purposes;
- C. Annual training duty performed for a period of 14 days or more as a member of the Reserve Officers' Training Corps, the Naval Reserve Officers' Training Corps, or the Air Force Reserve Officers' Training Corps; and
- D. Authorized travel to and from any duty or service described in (A) - (C) above.

952. How are the amount of wages and the period of military service determined?

The head of your respective service department determines the following:

- A. Whether and when you have performed work creditable for Social Security purposes;
- B. The amount of your wages; and
- C. The periods that your wages are paid.

953. Noncontributory wage credits after 1956.

953.1. What are “noncontributory wage credits”?

A member of a uniformed service may have wage credits in addition to basic pay received for active duty or active duty for training. These credits are subject to the maximum earnings limitation on income taxable for Social Security purposes. These “noncontributory wage credits” are granted in recognition of the fact that covered basic pay is increased by various allowances that are part of the actual reimbursement for services.

953.2. How are noncontributory wage credits granted?

You are granted noncontributory wage credits as follows:

- A. **For years 1957 through 1977**, you are granted \$300 for each calendar quarter that you receive any basic pay.
- B. **For 1978 and later**, you are granted credits in increments of \$100 up to a maximum of \$1,200 per calendar year. The \$100 increments are granted for each full \$300 of basic pay. No credit is granted if

your annual wages are less than \$300 and no further credit may be granted when the annual wages exceed \$3,600.

953.3. When are noncontributory wage credits NOT granted?

After September 7, 1980, wage credits may not be granted to service members discharged or released from active duty before completing the minimum active duty requirements. Therefore, wage credits will not be granted:

- A. **After September 7, 1980**, if you were initially enlisted in a regular component of the Armed Forces and:
 - 1. You did not complete at least 24 months of your enlistment; or
 - 2. The full period of active duty you were called upon to serve was less than 24 months, unless you were discharged due to:
 - a. Hardship as specified in section 1173 of Title 10 of the U.S. Code;
 - b. The application of section 1171 of Title 10 of the U.S. Code (commonly referred to as “for the convenience of the government”);
 - c. Disability under certain circumstances; or
 - d. Death during the period of enlistment;
- B. Your entry on active duty occurred **after October 13, 1982**, in a regular component of the Armed Forces and:
 - 1. You did not previously complete a continuous period of active duty of at least 24 months; or
 - 2. You were discharged or released from active duty before completing the lesser of 24 months or the full period of the tour of active duty being served unless the individual was discharged or released from active duty due to:
 - a. hardship as specified in section 1173 of Title 10 of the U.S. Code;
 - b. the application of section 1171 of Title 10 of the U.S. Code (commonly referred to as “for the convenience of the government”);
 - c. disability under certain circumstances; or
 - d. death during the period of enlistment.

954. Noncontributory wage credits based on military service before 1957.

954.1. How are wage credits granted to veterans for service before 1957?

Veterans with active military or naval service with the Armed Forces of the U.S. during the World War II period (September 16, 1940-July 24, 1947) or the post-World War II period (July 25, 1947-December 31, 1956) are granted noncontributory wage credits of \$160 for each month that the veteran:

- A. Was discharged or released from active service under conditions other than dishonorable, either:
 - 1. After active service of 90 days or more; or
 - 2. After less than 90 days' service by reason of a disability or injury incurred or aggravated in service in the line of duty; or
- B. Is still in active service; or
- C. Died while in the active military or naval service (unless death was inflicted as lawful punishment for a military or naval offense by other than an enemy of the U.S.).

954.2. Will the noncontributory wage credits be part of the veteran's Social Security record?

The \$160 a month noncontributory wage credits for military service are not actually posted on the veteran's Social Security record. When benefits are claimed on the veteran's Social Security record, the wage credits are then considered.

954.3. How are "conditional discharges" treated for Social Security purposes?

If an enlisted person received a "conditional discharge" to accept a commission with no break in service, the service is considered as performed in one period.

955. Definition of military or naval service of the U.S.

955.1. What does "military or naval service of the U.S." mean?

"Military or naval service of the U.S." includes the following:

- A. Service as a member of a Regular or Reserve component of the U.S. Army, Air Force, Navy, Coast Guard, or Marine Corps;
- B. Service as a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration; or
- C. Service by a midshipman at the U.S. Naval Academy or a cadet at the U.S. Military, Air Force, or Coast Guard Academies.

955.2. *Service for which auxiliary military organizations are not eligible for noncontributory military wage credits?*

Noncontributory military wage credits are not granted for service with certain auxiliary organizations such as: the Coast Guard Auxiliary; the temporary Coast Guard Reserve (unless service was full-time duty with pay and allowances); Civilian Auxiliary to the Military Police; and the Civil Air Patrol.

956. Effect of discharge under dishonorable conditions.

956.1. *What effect does dishonorable discharge have on noncontributory military service wage credits?*

A dishonorable discharge prohibits the granting of noncontributory military service wage credits for any period of active service to which the discharge applies.

956.2. *What types of separations are considered to be under dishonorable conditions?*

The following types of separations are issued under dishonorable conditions:

- A. A dishonorable discharge;
- B. A bad conduct discharge issued as a result of a sentence by a general court martial;
- C. A discharge for desertion;
- D. In the case of an officer, a resignation accepted “for the good of the service”;
- E. A discharge on the grounds that the person was a conscientious objector who refused to do military duty, to wear the uniform, or otherwise to comply with lawful orders of competent military authority; or
- F. A discharge by reason of conviction by a civil court for treason, sabotage, espionage, murder, rape, arson, burglary, robbery, kidnapping, assault with intent to kill, assault with a dangerous weapon, or an attempt to commit any of these crimes.

956.3. *How are wage credits considered if a veteran has more than one discharge involving separate periods of active service?*

A veteran may have more than one discharge involving separate periods of active service. The period of active service that a discharge under dishonorable conditions applies cannot be used for determining military service wage credits. However, wage credits may be granted

for any other period of active service that a veteran was released under conditions other than dishonorable.

957. Are noncontributory wage credits granted for military service with a foreign country?

Noncontributory wage credits may be granted for military service with a foreign country that was at war with the U.S. on September 16, 1940, during World War II if the service member:

- A. Entered the active military or naval service of the foreign country before December 9, 1941;
- B. Was a citizen of the U.S. throughout the period of service (or if the citizenship was lost, it was only because of the entrance into the naval or military service);
- C. Had resided in the U.S. for at least four years out of the five-year period ending with the day the service member entered into this military or naval service;
- D. Was living in the U.S. on the day of entrance into this military or naval service; and
- E. The member meets one of the following conditions:
 - 1. Died while in service; or
 - 2. Was discharged or released from this military or naval service under conditions other than dishonorable:
 - a. After at least 90 days' service; or
 - b. Because of a disability or injury incurred or aggravated in service in the line of duty.

958. Are officers of the National Oceanic and Atmospheric Administration or the Public Health Service considered members of the armed forces?

Commissioned Officers of the National Oceanic and Atmospheric Administration (prior to 1965, the Coast and Geodetic Survey) or the Public Health Service are considered to be in the active service of the Armed Forces for the purpose of military service wage credits and the special insured status provisions only under the following conditions:

- A. Commissioned officers of the National Oceanic and Atmospheric Administration may be granted wage credits for time spent:
 - 1. On active duty with an armed service department; or
 - 2. On active duty on military projects determined by the Secretary of Defense to be areas of immediate military hazard;
 - 3. In service in the Philippines if the individual was serving there on December 7, 1941; or

4. On active commissioned service with the National Oceanic and Atmospheric Administration after July 28, 1945, and before 1957.
- B. Commissioned officers of the Public Health Service may be granted wage credits for time spent:
1. On active commissioned service from July 29, 1945-July 3, 1952;
 2. On active commissioned service, while on detail to a component of the uniformed forces, during the periods September 16, 1940 - July 28, 1945, and July 4, 1952 - December 31, 1956, inclusive; or
 3. On active commissioned service from July 4, 1952 - December 31, 1956, even if not performed while on detail to a component of the uniformed services.

959. Under what circumstances are veterans NOT eligible for noncontributory wage credits?

You are not eligible for noncontributory wage credits as a veteran for military service if you meet any of the following conditions:

- A. Your Social Security benefit payable is larger without considering the wage credits;
- B. You have been convicted of certain offenses against the Federal Government such as treason, sedition, etc.;
- C. You refuse upon the ground of self-incrimination to appear, testify, produce books, etc. about your Government employment before a Federal grand jury, U.S. court, or U.S. congressional committee concerning matters of national security or your relationship with a foreign government;
- D. You are receiving a monthly benefit payable by another Federal agency (other than the Department of Veterans Affairs), based on the same period of service. However, if you were on active duty or active duty for training after 1956, you may be granted Social Security wage credits for active service during the six-year period, 1951-1956. Even if a service organization uses any or all of this period in determining your rights to, or the amount of, a retirement benefit payable by that organization, you may be granted wage credits; or
- E. The wage credits plus your covered earnings exceed the maximum earnings that may be credited for Social Security purposes for that year (see §714). In these cases, only wage credits that do not exceed the maximum earnings allowed will be credited.

960. When is a deceased World War II veteran fully insured for Social Security Purposes?

A deceased World War II Veteran is fully insured with an average monthly wage of \$160 if:

- A. The veteran died before July 27, 1954;
- B. The veteran died within three years after separation from active military or naval service; and
- C. The veteran's service was in the World War II period (September 16, 1940 - July 24, 1947).

Note: If a Veterans Affairs pension or a compensation benefit was ever paid, even if terminated, based on the veteran's death, deemed insured status benefits are prohibited.

961. Employment outside the U.S.

961.1. Is employment outside of the U.S. covered by Social Security?

Your work outside the U.S. is covered by Social Security if it is performed:

- A. As a U.S. citizen, a U.S. resident for an American employer (see §962), or for an American employer's foreign affiliate for which coverage has been arranged as described in §§963-965; or

Note: Prior to the 1983 Amendments, enacted on April 20, 1983, coverage was available only to U.S. citizens (not U.S. residents). Also, the American employer and the American employer's foreign affiliate both had to be corporations.

- B. On or in connection with an American vessel or aircraft, if the contract of employment was entered into within the U.S; or
- C. On or in connection with an American vessel or aircraft, if the vessel or aircraft touches at a port or airport in the U.S. while you are working on it.

961.2. What does “within the U.S.” mean?

“Within the U.S.” means on, in or over any of the 50 States, the District of Columbia, the Virgin Islands, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands or the territorial waters of any of these places.

961.3. What does “American vessel” mean?

The term “American vessel” means:

- A. Any vessel documented or numbered under the laws of the U.S.; or

B. Any vessel which is neither documented nor numbered under the laws of the U.S., nor documented under the laws of any foreign country if its crew is employed solely by:

1. One or more citizens or residents of the U.S.; or
2. Corporations organized under laws of the U.S. or any State.

961.4. What does American aircraft mean?

American aircraft means an aircraft registered under the laws of the United States.

962. Who can be considered an American employer?

An American employer includes:

- A. The U.S. or any of its instrumentalities;
- B. A State (including the District of Columbia, Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa) or any political subdivision of such State; or an instrumentality of the State or political subdivision;
- C. A person who is a resident of the U.S.;
- D. A partnership in which at least two-thirds of the partners are residents of the U.S.;
- E. A trust, if all of the trustees are U.S. residents; or
- F. A corporation organized under the laws of the U.S. or any State, including the District of Columbia, Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

963. Is work by a U.S. citizen for foreign affiliates outside the U.S. covered by Social Security?

Your work as a U.S. citizen or a U.S. resident outside the U.S. for a foreign affiliate (See §964) of an American employer is covered by Social Security if:

- A. Your American employer arranges for coverage by entering into an agreement with the Internal Revenue Service; and
- B. The agreement applies to all U.S. citizens and all U.S. residents employed outside the U.S. by the foreign affiliate. The agreement also applies to all citizens and residents subsequently employed by the affiliate if their work would be covered if performed in the U.S.

964. What is a “foreign affiliate”?

A “foreign affiliate” of an American employer is a foreign entity that:

- A. The American employer has not less than a 10 percent direct interest or indirect interest in; and
- B. Is defined in section 3121(l)(8) of the Internal Revenue Code.

965. Agreement to cover foreign affiliates.

965.1. When is the agreement to cover foreign affiliates effective?

The agreement to cover foreign affiliates is effective on the first day of the calendar quarter in which the agreement is entered into; or the first day of the following calendar quarter. The American employer chooses the effective date of coverage.

965.2. Can the agreement be amended?

The agreement may be amended to include any other foreign affiliate of the American employer. However, coverage of the new group is effective only as of the first day of the calendar quarter in which the agreement is amended.

965.3. Can the agreement be terminated?

Effective June 15, 1989, an agreement to cover foreign affiliates may no longer be terminated by the employer. Prior to June 15, 1989, the coverage agreement could be terminated by the American employer only after giving two years' notice of intention to terminate. Further, notice of termination can be given only after the agreement has been in existence for eight years. Thus, at least 10 years of Social Security coverage is assured. (However, the Secretary of the Treasury may terminate the agreement sooner.)

965.4. Can terminated agreements be reversed?

Once an agreement has been terminated in whole, the American employer may not again obtain coverage for any of its foreign affiliates. An agreement terminated with respect to one affiliate may not be reinstated with respect to that particular affiliate.

966. Is work for private employers of Guam and American Samoa covered by Social Security?

Work for private employers of Guam and American Samoa is covered by Social Security on the same basis as work of employees in the U.S. However, work in Guam by a resident of the Philippines under contract to work on a temporary basis as a nonimmigrant alien is not covered.

Work as an officer or employee of the government of American Samoa or any political subdivision or instrumentality thereof (except by a person covered under a retirement system established by law of the U.S.) has been covered since January 1, 1961. Beginning January 1, 1973, work as a temporary or intermittent employee of the government (or wholly-owned instrumentality) of Guam is covered by Social Security unless it is:

- A. Covered by a retirement system established by a law of Guam or the U.S.;
- B. Performed by an elected official;
- C. Performed by a member of the legislature; or
- D. Performed in a hospital or penal institution by a patient or inmate thereof.

967. Is work covered by the Railroad Retirement Act covered by Social Security?

Work covered by the Railroad Retirement Act is not covered by Social Security. However, earnings from railroad employment are counted for Social Security purposes at the death or retirement of a worker if he or she does not qualify under the railroad retirement program. For example, when a railroad worker retires with less than 120 months of railroad service, no railroad retirement annuity is payable. However, his or her railroad earnings after 1936 would then be considered in determining his or her rights to Social Security disability or retirement benefits.

Additional information on the Railroad Retirement Act is in Chapter 23.

968. The included-excluded rule.

968.1. What happens if part of an employee's work is covered by Social Security and part is not covered by Social Security?

When part of your work during a pay period is covered by and part excluded from Social Security and all of the work is being performed for one employer, the following rules apply:

- A. All of your work in that pay period is covered if 50 percent or more of your time during the pay period is spent in covered work; and
- B. All of your work in that pay period is excluded if more than 50 percent of your time during the pay period is spent in excluded work.

968.2. What does "pay period" mean?

The term pay period means the period of not more than 31 consecutive calendar days for which the employer ordinarily pays the employee. Where there are seasonal fluctuations, there may be one customary seasonal pay period and another customary non-seasonal pay period.

969. When does the included-excluded rule NOT apply?

The included-excluded rule does not apply if:

- A. Part of your work is covered by Social Security and part by the Railroad Retirement Act;
- B. Part of your work is performed within the U.S. for a foreign employer, and part is performed outside the U.S.; or
- C. There is no pay period, or the pay period covers more than 31 consecutive days, or there are separate pay periods for the covered and excluded work.

In all of the above instances, the wages paid for the work covered by Social Security are counted for Social Security purposes.

970. What are “International Social Security Agreements”?

International Social Security agreements provide exceptions to the coverage rules. The international agreement may provide that work that would otherwise be covered under both the U.S. Social Security program and the social security program of another country will be excluded from coverage. The rules of the agreements supersede the coverage rules if there is a conflict.

CHAPTER 10

STATE AND LOCAL EMPLOYMENT

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1000. Social Security coverage for State and local government employees.

1000.1. How are State and local government employees covered by Social Security and Medicare?

State and local government employees are covered for Social Security and Medicare in one of two ways. Their coverage is either: (1) mandated by law; or (2) under a Section 218 agreement between the State and SSA.

1000.2. What is a Section 218 Agreement?

A Section 218 agreement is a voluntary agreement between a State and SSA to provide Social Security and/or Medicare only coverage for State and local government employees. Section 218 agreements are authorized under section 218 of the Social Security Act. Under the 218 agreement, the State decides (within the limits of Federal and State law) whether to cover retirement system groups, non-retirement system groups, or both.

1000.3. What types of protections are covered under a Section 218 agreement?

A Section 218 agreement provides Old-Age, Survivors, Disability and Hospital Insurance (OASDHI) protection. Employees covered under a Section 218 agreement have the same Social Security Medicare Hospital Insurance (HI) coverage and benefit rights as employees in the private sector who are mandatorily covered for Social Security and Medicare.

1000.4. Who is covered for Medicare Hospital Insurance?

If you are a State or local government employee hired or rehired **after March 31, 1986**, you are mandatorily covered for Medicare Hospital Insurance (HI), unless the law excludes your coverage (see §1002).

If you were hired **before April 1, 1986** you are exempt from Medicare HI if you meet the following conditions:

- A. You have been working continuously for the same State or local government employer since March 31, 1986; and
- B. You are a member of a public retirement system.

Public employers may obtain Medicare HI coverage for employees hired before April 1, 1986 through a Section 218 agreement, by contacting the State Social Security Administrator.

1000.5. Is Social Security and Medicare Hospital Insurance coverage mandatory?

Beginning July 2, 1991, Social Security and Medicare HI coverage is mandatory for State and local government employees who meet the following conditions:

- A. They are not members of a public retirement system; or
- B. They are not covered under a Section 218 agreement, unless excluded by law (see §1002).

1000.6. Can a State terminate a Social Security coverage agreement?

No. A State may not terminate a Social Security coverage agreement, either in its entirety or with respect to any coverage group, on or after April 20, 1983 (see §1020).

1001. Role of the State Social Security Administrator.

1001.1. What is a State Social Security Administrator?

Each State has a designated official who is responsible for administering and maintaining the State's Section 218 agreement. This official is the State Social Security Administrator.

1001.2. What does the State Social Security Administrator do?

The main roles of the State Social Security Administrator are listed below:

- A. Conducts referenda for Social Security and/or Medicare coverage;
- B. Prepares and executes modifications to the State's 218 agreement to include additional coverage groups; and
- C. Provides information and advice to State and local employers and employees about Social Security and Medicare coverage, taxation, and reporting issues related to the State's 218 agreement.

1002. What type of work is excluded from mandatory Social Security and Medicare coverage?

You are excluded from mandatory Social Security and Medicare coverage if you do any of the following kinds of work:

- A. Services relating to your hiring for unemployment relief;
- B. Services you perform as a patient or inmate in a hospital, home, or other institution;
- C. Services you perform on a temporary basis in emergencies such as a fire, storm, snow, earthquake, flood or other similar emergencies;

- D. Services you performed as an election official/worker if you were paid:
1. Less than \$50 in a calendar quarter for years 1968 through 1977;
 2. Less than \$100 in a calendar year from 1978 through 1994;
 3. Less than \$1,000 in a calendar year from 1995 through 1999; or
 4. Less than \$1,100 beginning January 1, 2000. The \$1,100 limit will be automatically indexed each year thereafter for inflation.
- Note:** In some States, election worker services are covered under a Section 218 agreement. Therefore, a lower dollar amount may apply, unless the State executes a modification to the State's 218 agreement to increase the threshold amount.
- E. Services you perform in a position compensated solely on a fee basis;
- F. Services you perform as a student if you are working at the school where you are enrolled and regularly attending classes; or
- Note:** In some States, student services are covered under a Section 218 agreement.
- G. Services you perform as a nonresident alien, if you meet the following conditions:
1. You are temporarily residing in the U.S.;
 2. You are holding an F1, J1, M1 or Q1 visa; and
 3. The work you are doing carries out the purpose for which you were admitted to the U.S.

1003. Terms defined for Section 218 Agreement purposes.

1003.1. What is a "State"?

A "State," for purposes of a Section 218 agreement, includes the 50 States, Puerto Rico, the Virgin Islands and interstate instrumentalities. It does not include the District of Columbia, Guam or American Samoa. All states have a Section 218 agreement with the Social Security Administration.

1003.2. What is a "political subdivision"?

A political subdivision includes an instrumentality of a State, one or more of its political subdivisions, or a State and one or more of its political subdivisions. Political subdivisions include counties, cities, townships, villages, school districts, utility districts and other similar governmental entities.

Organizations such as libraries and hospitals may be integral parts of cities, counties, or other political subdivisions. If so, their coverage as a

separate political subdivision depends on the coverage of the political subdivisions of which they are a part. They may be political subdivisions in themselves; or, they may be private non-profit organizations. The employees of private non-profit organizations cannot be covered under a Section 218 agreement.

1003.3. What is an “interstate instrumentality”?

An “interstate instrumentality” is an independent legal entity, organized by two or more states, to carry out some function of government (e.g., regional transportation systems). For purposes of a Section 218 agreement, an interstate instrumentality has the status of a State under the Social Security Act.

1003.4. What is an “employee”?

An employee, for purposes of a Section 218 agreement, must meet the definition of employee as defined in Section 210 of the Social Security Act (see Chapter 8). It includes an elected or appointed officer of a State or political subdivision.

1004. Social Security and Medicare coverage under a Section 218 Agreement.

1004.1. What is a “coverage group”?

State and local government employees are brought under a Section 218 agreement in groups known as “coverage groups.” The State decides, within the limits of Federal and State law, which groups of employees to cover under its agreement. The State also decides when Social Security coverage for the group begins.

1004.2. What types of coverage groups are there?

There are two types of coverage groups:

- A. **Absolute coverage groups** are composed of employees in positions not covered by a State or local retirement system; and
- B. **Retirement system coverage groups** are composed of employees in positions covered by a State or local retirement system.

1005. Absolute coverage groups.

1005.1. What does an absolute coverage group consist of?

This group includes employees in positions not covered by a retirement system. Each of the following constitutes an absolute coverage group:

- A. State employees performing services in connection with one or more of the State's proprietary or non-proprietary functions;
- B. Employees of a State's political subdivision, performing services in connection with one or more of that subdivision's non-proprietary or proprietary functions;

- C. Civilian employees of a State's National Guard unit; or
- D. Agricultural product inspectors employed by agreement between the State and the Department of Agriculture under the Agricultural Marketing Act (7 U.S.C. 1624) or the Perishable Agricultural Commodities Act (7 U.S.C. 499n).

Coverage is provided for all current and future employees in the group unless one of the exclusions in §1006 applies.

1005.2. What is an “ineligible”?

An “ineligible” is an employee who is in a position under a retirement system but is not eligible for membership in the retirement system. Ineligibility for membership may be because of age, length of service, date of hiring, etc.

1005.3. Can a State cover ineligibles under the absolute coverage group?

Yes. A State can cover ineligibles as a part of or in addition to the absolute coverage group. However, the State must decide whether coverage of the ineligibles will continue or terminate if the ineligible later becomes eligible for membership in a retirement system (see §1010).

1006. What types of work are not covered by Section 218 Agreements?

Certain types of work are not covered by Section 218 agreements because Federal law excludes them. You are not covered under Section 218 agreements if:

- A. Your work relates to your hiring for unemployment relief;
- B. You work as a patient or inmate in a hospital, home, or other institution;
- C. You work as a transportation system employee, and Social Security is compulsory (see §1007);
- D. Your work would be excluded from Social Security if you were working for a private employer (except certain agricultural labor and work by students). Nonresident aliens who have an F1, J1, M1 or Q1 visa are examples; or
- E. You work on a temporary basis in emergencies such as a fire, storm, snow, earthquake, flood or other similar emergency.

1007. Work for public transportation systems.

1007.1. Are public transportation system employees covered under Section 218 agreements?

Work you do for a public transportation system that is operated by a State or political subdivision of a State may be covered under a Section 218 agreement. It is covered under the State's agreement if the work is not compulsorily covered by Social Security.

1007.2. When is it required to cover public transportation system work under Social Security?

Generally, public transportation work is compulsorily covered under Social Security where the following conditions exist:

- A. The transportation system was acquired from private ownership after 1950; and
- B. No general retirement system became applicable to the employees at the time it was acquired.

1008. Does the State have the option of including or excluding certain types of services under a Section 218 Agreement?

Yes. Section 218 agreements, at the option of the State, may include or exclude the following services:

- A. Services in elective positions;
- B. Services in part-time positions;
- C. Services in positions compensated solely by fees (See § 1009);
- D. Agricultural labor (See §§901-914.);
- E. Student services; and
- F. Services performed by election officials and election workers paid:
 - 1. Less than \$50 in a calendar quarter for years 1968 through 1977;
 - 2. Less than \$100 in a calendar year from 1978 through 1994;
 - 3. Less than \$1,000 in a calendar year from 1995 through 1999; or
 - 4. Less than \$1,100 beginning January 1, 2000. The \$1,100 limit will be automatically indexed each year thereafter for inflation.

Generally, if one of the types of work listed above was covered under the State's agreement, it cannot later be removed from coverage, except for the services in (F) above.

1009. Positions compensated solely by fees.

1009.1. How are services performed entirely on a fee basis treated?

If the work you do is performed entirely on a fee basis and these services are not covered under a State agreement, you are considered self-employed (See §1125). This does not apply to positions compensated by both salary and fees.

1009.2. What is the difference between a “fee” and a “salary”?

When a public official receives payment for services directly from the public, that payment is considered a fee. A fee is distinguished from a salary when the compensation for a particular service is paid directly to the State or political subdivision public official by the party for whom the service is performed.

1009.3. What if both salary and fees are used as compensation?

If you receive compensation in the form of both a salary and fees, your position is considered fee-based if the fees are the primary source of compensation. However, State law may determine that any position, for which any salary is paid, is not a fee-based position. In this case, your position may not be considered fee-based.

1010. Retirement system coverage groups.

1010.1. Can employees covered by a State or local retirement system also be covered under a Section 218 agreement?

Yes. Employees covered by a State or local retirement system can be covered under a Section 218 agreement if a majority of all eligible employees under the system vote in favor of such coverage in a referendum. The referendum is held under the State's authorization. (See §1001).

1010.2. What employees are eligible to vote in a referendum?

To be eligible to vote in a referendum, you must be:

- A. A member of the retirement system at the time the referendum is held; and
- B. In a position under the retirement system when:
 - 1. The notice of referendum is given; and
 - 2. The referendum is held.

1010.3. What does a retirement system coverage group consist of?

The state has the option to include any of the following in a retirement system coverage group:

- A. All employees in positions under the retirement system;
- B. Only employees of the State in positions under the system;
- C. Employees of one or more political subdivisions in positions under the system;
- D. Any combination of the groups referred to in (B) and (C);
- E. Employees of a hospital that is an integral part of a political subdivision;
- F. Employees of two or more hospitals. Each hospital must be an integral part of the same political subdivision; or
- G. Employees in each institution of "higher learning," (e.g., colleges, junior colleges, and teacher's colleges).

Generally, a retirement system coverage group includes: (1) all current members of the retirement system; (2) employees who are ineligible for membership; and (3) employees who can choose to become members of the retirement system.

Some States may divide a retirement system and cover only members who want coverage and new members as in §1015.

1011. Retirement system defined.

1011.1. What is a "retirement system"?

A retirement system is any pension, annuity, retirement or similar fund or system maintained by a State or local government or instrumentality. The purpose of the system is to provide retirement benefits to participating employees. The Internal Revenue Service has the responsibility for determining whether a retirement system is qualified for purposes of mandatory Social Security and Medicare coverage. (See §1000.5.)

1011.2. Who determines if a worker is a member of a retirement system?

The State determines if you are a member of a retirement system under State law. Generally, you are considered a member of a retirement system if you can qualify for benefits under that system based on your present job.

1012. Social Security coverage for police officers and firefighters under a retirement system.

1012.1. Can police officers and firefighters, covered by a retirement system, be covered under a Section 218 agreement?

Yes. Police officers and firefighters covered by a retirement system can be covered under a Section 218 agreement. In order to be covered under a Section 218 agreement, a majority vote referendum or, if allowed, a divided vote referendum is required. Prior to August 15, 1994, only the following 23 States (including interstate instrumentalities) were authorized to provide coverage for police officer and firefighter positions under a retirement system:

Alabama	Kansas	North Carolina	Tennessee
California	Maine	North Dakota	Texas
Florida	Maryland	Oregon	Vermont
Georgia	Mississippi	Puerto Rico	Virginia
Hawaii	Montana	South Carolina	Washington
Idaho	New York	South Dakota	

Note: There are special provisions in the Federal law that relate to individual States. Some of these provisions pertain to coverage for certain police or firefighters.

1012.2. Who is included in the retirement system coverage group for a majority vote referendum?

If a majority vote referendum is held, the retirement system coverage group consists of all current and future employees in positions under the retirement system in which the referendum was held. Ineligibles are included.

1012.3. Who is included in the retirement system coverage group for a divided vote referendum?

If a divided vote referendum is held, the retirement system coverage group consists of members who choose coverage as well as future members (see §1015).

1012.4. What if the police officers and firefighters are under the same retirement system?

If the police officers and firefighters are under the same retirement system, their positions may either be:

A. Considered separate retirement systems for referendum and coverage purposes;

B. Combined with each other, and other positions; or both.

In addition, a separate referendum can be held: (1) among the police officers; (2) among the firefighters; or (3) among the police officers **and** firefighters as one group.

1013. Police officers and firefighters not covered by a retirement system.

1013.1. What if police officer and firefighter positions are not covered by a retirement system?

These positions are generally covered as part of the political entity's absolute coverage group when the political entity is covered under the State's 218 agreement. The absolute coverage group includes other city or town employees whose positions are not covered by a public retirement system.

If police or firefighter positions are covered as part of an absolute coverage group and later become covered under a retirement system, Section 218 coverage continues.

1013.2. Can ineligibles in police officer or firefighter positions be covered with an absolute coverage or retirement system coverage group?

Ineligibles in police officer or firefighter positions cannot be covered as part of, or in addition to, an absolute or a divided retirement system coverage group.

1014. Rehired annuitants.

1014.1. What is a "rehired annuitant"?

A "rehired annuitant" is a retiree who is rehired by his or her former employer or another employer that participates in the same retirement system as the former employer. A rehired annuitant is either drawing a retirement benefit from that retirement system, or has reached normal retirement age under the retirement system.

1014.2. Are rehired annuitants covered under Social Security?

Under Federal regulations, rehired annuitants are excluded from mandatory Social Security coverage. However, if you are rehired to perform services in a State or local government position that is covered for Social Security under a Section 218 agreement, the services in that position are covered for Social Security. All retirees hired after March 31, 1986, are covered for Medicare HI by law.

1015. Divided retirement systems.

1015.1. Can states divide retirement systems?

Certain states are authorized to divide a retirement system. This division is based on whether the employees in positions under that retirement system want Social Security coverage. These states are:

Alaska	New Mexico
California	New York
Connecticut	North Dakota
Florida	Pennsylvania
Georgia	Rhode Island
Hawaii	Tennessee
Illinois	Texas
Massachusetts	Vermont
Minnesota	Washington
Nevada	Wisconsin
New Jersey	

1015.2. How is the retirement system established?

The retirement system may be established by the State or a political subdivision thereof. A referendum must be held in which all members of the system are given the chance to elect coverage. Employees who are not members of the system, but have an option to join, are considered members of the system for referendum purposes. If a retirement system obtained coverage before 1960, the employees who had an option to join the system were, in most cases, placed in the group of employees who had not elected Social Security coverage. After the group voting for coverage has been covered, all new members to the retirement system are automatically covered.

1015.3. Can members have a second chance to obtain Social Security coverage?

State law may permit your State to provide members with a second chance to obtain Social Security coverage. You must file a written request for coverage with the State. This coverage must be made a part of a State's agreement within two years after the date the retirement system coverage group was covered.

The State may, at any time, hold a majority vote referendum among all members who did not choose coverage. The outcome of the referendum

may provide coverage for all positions under the system not already covered under the system.

1015.4. Can ineligible obtain Social Security coverage?

If you are an employee in a position under the retirement system and you are ineligible for membership in the system, you may be covered at the option of the State. As an ineligible, you have no individual election as to your coverage.

1016. What are the procedures for conducting a referendum?

The referendum is a State matter. However, Federal law does require that the Governor of the State certify that the following conditions have been met:

- A. All eligible employees were given at least 90 days' notice of the referendum;
- B. An opportunity to vote was given and limited to eligible employees;
- C. The referendum was held by secret written ballot for a majority vote referendum; or by written ballot for a divided vote referendum; and
- D. A majority of all of the retirement system's eligible employees voted for coverage. (In a divided vote referendum, only those employees who voted "yes" for coverage and all future employees will be covered.)

The referendum procedures are conducted under the direction of the State Social Security Administrator (see §1001.)

1017. Effective date of Section 218 Agreement.

1017.1. When does coverage under a Section 218 agreement begin?

The State decides when coverage will begin. Coverage under a Section 218 agreement may begin as early as five years before the year the State modifies its agreement to include the coverage group. Some State laws do not permit the agreement to be retroactive for as much as five years.

1017.2. How many effective dates can apply for each coverage group?

Generally, there can be only one effective date for each coverage group. If a retirement system includes: (1) employees of the State; and/or (2) employees of one or more political subdivisions of the State covered as one group, then the State may provide different effective dates for the employees of each participating entity.

1017.3. How is the effective date determined under a divided retirement system?

Under a divided retirement system (see §1015), members who did not originally vote for coverage, but later choose coverage, must be included as of the effective date originally provided for the coverage group.

1018. Can former employees be considered for retroactive coverage?

Ordinarily, only individuals in an employment relationship on a specific date, set out in the agreement, can obtain retroactive coverage for services. However, under certain conditions, a State may consider former employees, whose earnings were incorrectly reported to the Internal Revenue Service, to be in the coverage group for the period of retroactive coverage.

1019. Wages paid before January 1, 1987.

1019.1. Who is responsible for the payment of contributions for wages paid before January 1, 1987?

The State is liable for the payment of contributions on all wages paid before January 1, 1987, for services covered under the State agreement. The amount due is equal to the sum of the employer and employee taxes imposed under the Federal Insurance Contributions Act (FICA) on private employers. Wages for covered services are subject to the wage limitations in §1301.

1019.2. How are contributions paid if an employee worked for more than one political entity?

If an employee worked for more than one political entity, contributions are due on all wages paid by each entity up to the maximum (see §1407).

1019.3. Is there a statute of limitations for State liability of contributions for wages?

A statute of limitations determines a time limit beyond which: (1) a State is not liable for amounts due on wages paid to employees whose services are covered under its agreement; and (2) SSA is not liable for refunding or crediting overpayments made by a State under its agreement.

In some situations, the earnings record of an individual may be corrected after the time limit for revising such records has expired. (See §§1424-1425.)

1019.4. What types of reviews may be requested of the Commissioner of Social Security?

Any State may request the Commissioner of Social Security to review:

- A. An assessment of an amount due from the State under its agreement;
- B. A disallowance of the State's claim for credit or refund of an overpayment of its contributions; or
- C. An allowance to the State of a credit or refund of an overpayment of its contributions.

1019.5. When are requests for review by the Commissioner of Social Security filed?

The State must file its request for review within 90 days after the date of the notice to the State of the assessment, disallowance or allowance. The time for filing the request for review may be extended for good cause. The request for extension of time must be made before expiration of the 90-day period.

1019.6. What information is included with the request for review?

The request must show the specific issue on which review is being asked. Any additional evidence or information that the State wishes to submit is also included. SSA may allow a State an additional 90 days from the filing of the request for review to furnish evidence or information. If the State needs more time, an extension may be granted for good cause.

1019.7. What happens after the review?

SSA reviews whether or not the State has paid the amount assessed or has taken the credit allowed. If the State is not satisfied with the decision, it may file civil suit in the appropriate Federal district court for a redetermination. The appeal must be filed within two years of notification of SSA's decision. SSA may extend the time for filing a civil action for good cause. The State must request an extension of time before expiration of the two-year period.

Note: For wages paid after December 31, 1986, States are no longer liable for their political subdivisions' Social Security deposits. States and political subdivisions are required to follow FICA procedures, and the IRS is responsible for the administration and collection of the FICA taxes.

1020. Termination of Section 218 Agreements.

1020.1. Can a Section 218 agreement be terminated?

No. A State may not terminate a Social Security coverage agreement either in its entirety or with respect to any coverage group, on or after April 20, 1983. The prohibition against terminating Section 218 agreements applies to any agreement in effect on April 20, 1983, regardless of whether a notice of termination was in effect on that date. Prior to 1983, States could terminate a Section 218 agreement, in part or entirely, under certain specified conditions.

The prohibition against terminating Section 218 agreements also applies to involuntary terminations for failure to comply with the agreement. This includes partial terminations in cases where an entity has been legally dissolved.

Note: States and interstate instrumentalities may modify their agreements to cover groups previously terminated.

1020.2. What should be done if an entity no longer exists?

There are instances where an entity is legally dissolved or is no longer in existence. When an entity is dissolved, the State must notify SSA and submit evidence of the dissolution. SSA notifies the State in writing whether the evidence is acceptable documentation that the entity no longer exists.

CHAPTER 11

ARE YOU SELF-EMPLOYED?

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1100. Social Security coverage for the self-employed.

1100.1. When did Social Security coverage begin for self-employed people?

Most self-employed people became covered by Social Security in 1951.

1100.2. What are the exceptions?

- A. Farmers, ministers, and some other individuals (including certain professionals) were not covered until 1955;
- B. Additional groups of professionals were covered for taxable years ending after 1955; and
- C. Self-employed doctors of medicine were covered for taxable years ending on or after December 31, 1965.

Note: See §1122 for a detailed list of activities excluded from self-employment coverage.

1100.3. How is self-employment income calculated?

“Self-employment income” that is creditable for Social Security is based on “net earnings from self-employment” derived from a “trade or business” covered by the law.

Payment from self-employment that is not covered under Social Security is included when figuring income for earnings test purposes. (See Chapter 18)

1101. Trade or business defined.

1101.1. How is “trade or business” defined?

For Social Security purposes, the term “trade or business” has the same meaning as when used in section 162 of the Internal Revenue Code relating to income taxes. However, certain occupations and the self-employed activities of members of certain religious groups who have been granted exemptions from the self-employment tax are not included in the term “trade or business” for Social Security purposes. They are included only if certain conditions are met.

1101.2. What are the guidelines for determining “trade or business” activity?

“Trade or business” is not specifically defined in section 162 of the Internal Revenue Code. However, certain guidelines for deciding whether a trade or business exists have been set forth in court decisions and Internal Revenue Service rulings. Briefly stated, these guidelines are:

- A. You started and carried on the activity in good faith with the intention of making a profit or producing income;
- B. You carried on the activity regularly, with a continuity of operation, a continual repetition of transactions, or a regularity of activities;
- C. The activity is your regular occupation or calling that you carry on to make a living or a profit; and
- D. You present yourself to the public as being engaged in the selling of goods and/or services.

Any one of these factors standing alone is not enough to show that a trade or business exists, but not all the factors need be present.

1102. Personal services.

1102.1. Are personal services required for income to count toward Social Security?

Personal services are not required. You may carry on a business through employees. Thus, absentee owners or silent partners can derive income from a trade or business.

1102.2. Are limited partners covered by Social Security?

For taxable years beginning after 1977, limited partners are excluded from Social Security coverage. Previously, limited partners could be covered on the same basis as other partners.

1103. Does length of time engaged in an activity determine a trade or business?

The length of time you engage in an activity usually is a factor in determining if it is a trade or business. If the activity is seasonal or of short duration, however, the period of time is not important.

Selling ice cream during the summer months or owning a grocery store for a short time before selling it. The short time period would not prevent the activity from being covered by Social Security.

1104. Can an illegal activity be a trade or business?

The illegality of an activity does not prevent it from being a trade or business. For example, professional gamblers, bookies, etc. may be engaged in a trade or business. If you are in this category, you are considered self-employed and are required to report your income and pay self-employment taxes.

1105. Can more than one trade or business be operated?

You may own more than one trade or business. For example, you may operate both a wholesale grocery and a restaurant.

1106. Is a hobby a trade or business?

A hobby is not generally a trade or business. If you buy and sell stamps, pigeons, or coins to further the hobby rather than to make a profit, the activity is not a trade or business. If you conduct these activities to provide part or all of your livelihood, they may be a trade or business.

Consideration of the guidelines in §1101, in combination with the facts in each case, determine whether the activity is a trade or a business.

1107. Partnership defined. Definition of partnership.

1107.1. Are business partners self-employed?

Yes, business partners are self-employed. A partnership is generally said to be created when two or more persons join together to carry on a trade or business. Each partner contributes in one or more ways with money, property, labor, or skill and shares in the profits and risks of loss in accordance with the partnership agreement or understanding.

1107.2. How does intention relate to partnership?

The intention of the parties that join together to carry on a trade or business is important in determining whether a partnership exists. Intention of the parties is determined not merely from their statements, but to a large degree, from how they carry on the business with each other and with third parties. The abilities and contributions of each partner and the control that each has over the operation of the business are also important factors.

1107.3. Is a partnership the same for Social Security as for income tax?

A partnership is the same for Social Security purposes as for income tax purposes except that Social Security excludes coverage of a limited partner in a limited partnership. Besides the ordinary partnership, the term “partnership” for Federal income tax purposes includes a syndicate, group, pool, joint venture, or any other unincorporated organization that carries on a business. The term does not include corporations, trusts, estates, or associations taxable as corporations. (See §825 for an explanation of these associations.)

1107.4. Must a partnership have a formal agreement?

No. Two or more persons, including husbands and wives, may be self-employed as partners for income tax and Social Security purposes. This may apply even if they do not operate under a formal partnership agreement, and even if they are not considered partners under State law because they have not complied with local statutory requirements.

1107.5. Is a partnership the same as a joint venture?

For Federal income tax purposes and for Social Security purposes, a partnership and a joint venture are essentially the same. The main distinction is that a partnership involves a continuing enterprise while a joint venture is usually for the accomplishment of a single project or transaction.

1108. What factors indicate a partnership or joint venture?

The following factors indicate a partnership or joint venture:

- A. An intent on the part of two or more people to join together in good faith to carry on a trade or business;
- B. Contribution of capital or services to the business by each party;
- C. A sharing of the right to participate in management decisions and other responsibilities;
- D. A sharing in the profits and risk of loss in accordance with the parties' agreement; and
- E. Neither person is an employee of the other.

All of these basic factors must be present for an arrangement to be considered a partnership.

1109. Families and partnerships.

1109.1. May families form partnerships?

Yes. You may form valid partnerships with members of your family. For instance, a husband and wife or parents and children may conduct a business enterprise as a partnership.

1109.2. How is the validity of family partnerships determined?

The determination regarding partnerships with family members in a business depends on how you operate the business. You may have joint funds or mutual management with your spouse, but the legal incidents of the husband and wife relationship complicate the determination as to whether the business is jointly operated more than if the parties were unrelated. Merely "helping out" in the business or doing chores does not establish a partnership.

In cases involving closely related parties, the factors that usually indicate a partnership, such as the use of property, must be carefully evaluated to determine whether they indicate the existence of a partnership or a sole proprietorship.

1110. What factors indicate a valid partnership?

The following factors help establish whether your business is conducted as a partnership:

- A. Copies of any written agreements entered into by the parties or statements of the parties as to the terms of the arrangement;
- B. Copies of partnership income tax returns on which the business income was reported;
- C. Corroboration from the other partner(s); and
- D. Statements from disinterested third parties, such as suppliers, wholesalers, customers, local business people, etc., who are familiar with the manner in which your business was conducted.

1111. Does transfer of capital interest to a family member make the member a partner?

Transfer of capital interest to a family member in a family partnership to a member of the same family (including only his or her spouse, ancestors and lineal descendants) generally makes the member a partner if:

- A. A bona fide transfer by gift or purchase of a capital interest in the partnership has occurred;
- B. The member actually owns the partnership interest and is vested with dominion and control over it;
- C. The partnership is one in which capital is a material income-producing factor; and
- D. A valid partnership was in existence before the transfer or was created at the time of the transfer.

1112. Is an association taxable as a corporation or a partnership?

An association taxable as a corporation (see §825) is not a partnership for self-employment tax purposes because it is not considered a partnership for income tax purposes.

1113. Writers receiving royalties.

1113.1. Are writers engaged in a trade or business?

Writers who receive royalties may be engaged in a trade or business. Each case must be decided from the facts. A one-time venture of short duration is usually not a trade or business, but a repetition of such ventures would constitute a trade or business. Thus, if you write only one book as a sideline and never revise it, the writing activities would probably not be a trade or business. However, if you prepare new

editions from time to time or write several books, the writing and editing activities would be a trade or business.

1113.2. Is writing in combination with other activities considered a trade or business?

You may engage in other related activities which, when considered together with the writing activities, may be a trade or business. For example, if you are a college professor who writes a book on business administration and gives lectures and advice to business groups on the same subject, you would probably be in a trade or business.

Note: For the effect of the receipt of royalties on the payment of benefits, see §1812 (W).

1114. Nonprofessional fiduciaries.

1114.1. Are nonprofessional fiduciaries in a trade or business?

Nonprofessional fiduciaries serve as executors or administrators in isolated instances, and then only as personal representatives for the estate of deceased friends or relatives. Generally, they are not engaged in a trade or business, unless all of the following conditions are met:

- A. There is a trade or business among the assets of the estate;
- B. The fiduciary actively participates in the operation of this trade or business; and
- C. The fees of the fiduciary are related to the operation of the trade or business.

1114.2. Can nonprofessional fiduciary activities be considered a trade or business if they are extensive?

Activities of a nonprofessional fiduciary of a single estate may be a trade or business if they are of sufficient scope and duration. This may occur when the executor manages an unusually large estate that requires extensive management activities over a long period.

1115. Is a beneficiary of a trust operating a trade or business engaged in the trade or business?

A beneficiary of a trust that operates a trade or business is not engaged in the trade or business. This is because the trust rather than the beneficiary is engaged in the activity. However, a trade or business that is carried on by a conservator, committee, or guardian on behalf of an incompetent is considered as carried on by the incompetent. This is true even if the person has been legally adjudged as incompetent.

Business carried on by executors or administrators of deceased's estate.

1116. Business carried on by executors or administrators of deceased's estate.

1116.1. When income is generated by a business that is part of an estate, who receives the income?

When a business is part of an estate that is being administered, the income from the business is income of the estate and not of the heirs. This is true even if one or more of the heirs does the actual work and keeps the proceeds, and even if the heir is the administrator of the estate. However, this work may be a separate trade or business.

1116.2. When pay is received for running a business that is part of an estate, how is it classified?

If you receive pay designated specifically from running the business (as distinguished from an amount received as a distribution of estate assets to an heir), it counts as earnings from self-employment. (See also §1114 for rules where the administrator runs the business.)

1117. What categories of mail carriers are self-employed?

Star route mail carriers, contract mail messengers, contract postal station operators, and contract postal branch operators work on a contract basis and are self-employed, unless determined by the U.S. Postal Service to be employees of that Service.

1118. Owner of land on which business is operated.

1118.1. When is an owner also a landlord?

Some facts that indicate an owner is a landlord are:

- A. The owner's right of entry on the land is limited to the right to protect and maintain the property; and
- B. The person occupying the land has:
 - 1. Right to possession of the land;
 - 2. Right to use of the land for his or her own purposes;
 - 3. Right to use and possession for a definite period of time;
 - 4. Obligation to pay rent;
 - 5. Right to sublease; and
 - 6. Control over the running of the business.

An owner of land can enter on it to prevent waste, make repairs, etc. In the case of a farm, an owner may take part in formulating the farm plan and may require the practice of good husbandry. An owner may also furnish supplies and equipment and share in the cost of seed,

fertilizer, and other expenses for maintaining the fertility of the land or increasing its yield.

1118.2. Do these activities affect self-employment of the tenant or owner?

Neither the exercise of these rights nor the furnishing of these goods is inconsistent with a landlord-tenant relationship. In this case, the tenant is a self-employed farm operator and the farm owner is a landlord. The landlord's rental income counts for Social Security only if he or she materially participates in the crop production, as explained in §§1221-1232.

1119. Definition of sharefarmer.

1119.1. When does a sharefarming arrangement exist?

A sharefarmer is a self-employed person. A sharefarming arrangement exists if the arrangement provides for all of the following:

- A. The sharefarmer undertakes to produce a crop or livestock on the landowner's farm;
- B. The sharefarmer receives a share of the crop or livestock, or a share of the proceeds from their sale; and
- C. The amount of the sharefarmer's share depends upon the amount of the crop or the number of livestock produced.

If any one of these elements is not present, a “sharefarming” relationship does not exist.

1119.2. What are the other possible relationships?

There may, however, be a landlord-tenant relationship, or the person may be an employee of the landowner, or a partnership, or joint venture may exist between them.

1120. “Undertakes to produce a crop” defined for sharefarming arrangements.

1120.1. What is a “sharefarming arrangement”?

A “sharefarming arrangement” is one in which the sharefarmer performs the labor for production of the crop. It is not one in which the landowner agrees to participate in the day-to-day physical labor in the production of the crop or livestock.

1120.2. What does “undertakes to produce a crop” mean?

The phrase “undertakes to produce a crop or livestock” means performing or assuming the responsibility for performing substantially all the physical labor involved in producing of the farm product.

1120.3. What activities are included under this definition?

Generally, this means that the tenant has the responsibility for caring for the crop from the beginning up to and including harvesting. In some circumstances, it may not include planting of the crop. For example, in fruit raising operations, the planting of fruit trees, bushes, or plants may have been done by the landowner in a prior year. This would not alter the relationship of the parties to a sharefarming arrangement with regard to the fruit crop.

1120.4. If the landowner harvests or sells the crop, does the sharefarming arrangement remain?

The landowner may sometimes harvest or sell the crop produced. If the person who produced a crop has the responsibility for planting, raising, and caring for the crop or livestock during substantially all of the growing period, the element of a sharefarming arrangement is still met.

1120.5. What activities are excluded from “producing a crop or livestock”?

Producing a crop or livestock does not include such specialized activities as custom sheep shearing, custom harvesting, dusting, or custom cultivating.

1121. Partnership or joint ventures between farm owner and operator.

1121.1. When are a farm owner and operator in a partnership?

If both the farm owner and the person working the land are involved in the management and control of the farm operations or in the day-to-day operations of the farm, they may be partners. (Some guidelines as to the existence of a partnership are set out in §§1107-1112.)

1121.2. If the operator alone produces the crop or livestock, is the arrangement a partnership?

No. In a partnership, the operator alone does not undertake to produce the crop or livestock, even though the agreement may name one partner to do the physical work and the other to contribute his capital, credit, management services, etc. In this case both parties are farm operators and self-employed.

1122. Exclusions from trade or business.

1122.1. What exclusions apply to trade and businesses for Social Security purposes?

The term “trade or business” does not include the following for Social Security purposes:

- A. Work as an employee, except newspaper vendors who are age 18 or older;
- B. Work by U.S. citizens performing services in the U.S. as employees of a foreign government and, in some circumstances, as employees of an instrumentality wholly owned by a foreign government, or an international organization;
- C. Employees of a State or political subdivision thereof who are paid solely on a fee basis and whose services are not otherwise covered as employment under a Federal-State coverage agreement (see §1125);
- D. Work as an employee or employee representative covered by the Railroad Retirement system;
- E. Work as a public official (except public officials of a State or political subdivision thereof who are paid solely on a fee basis and whose services are not covered under a Federal-State coverage agreement) (see §1126);
- F. Self-employment by members of certain religious sects exempt from self-employment taxes;
- G. Services performed by ordained, commissioned or licensed ministers if they elected to be exempted from coverage under the Internal Revenue Code, and by members of religious orders who have not taken a vow of poverty;
- H. Services performed by Christian Science practitioners, if they have elected to be exempted from coverage under the Internal Revenue Code; or
- I. Deemed self-employment income of employees of church or church-controlled organizations that have elected to be exempt from payment of Social Security taxes for its employees.

1122.2. What trade or business rules apply to religious orders?

The term “trade or business” does not include services by a member of a religious order who has taken a vow of poverty when these services are performed in the exercise of the duties required by the order.

However, effective October 30, 1972, these services may be covered as employment for the order if the order irrevocably elects coverage for its

entire active membership and its lay employees. (For rules that apply see §932.)

1123. Are newspaper vendors self-employed?

Newspaper vendors who are age 18 or older are covered as self-employed persons if they are excluded from coverage as employees under the rules stated in §§929-930. Newspaper vendors under age 18 are considered as self-employed only if they are independent business people.

1124. Are employees of foreign governments self-employed?

Services are considered self-employment (and excluded from employment) if they were performed in the U.S. by U.S. citizens who are employees of:

- A. A foreign government;
- B. An instrumentality wholly owned by a foreign government; or
- C. An international organization.

1125. State and local government employees.

1125.1. If Federal-State coverage for a government employee is not provided, are earnings covered as self-employment?

If you performed services after 1967 that were:

- A. Compensated solely on a fee basis performed as an employee of a State or political subdivision of a State; and
- B. Not covered under a Federal-State coverage agreement, then Your earnings must be counted as self-employment earnings.

1125.2. Are exceptions applicable?

If you were an employee who in 1968 performed services as described above, you could have made an irrevocable election not to have such fees constitute net earnings from self-employment for 1968 and later.

1125.3. How is this exception obtained?

The exclusion of fees from net earnings would have been obtained by filing the certification of election with the Internal Revenue Service on or before the due date of your tax return for 1968. If you did not file this certification, you must count the earnings as self-employment earnings.

1125.4. If the services are covered by an agreement with the Secretary of HHS and the state, how are earnings counted?

If the services are covered under an agreement between the Secretary of Health and Human Services and the State for which the services are rendered, as described in Chapter 10, the services are covered as employment.

1126. Public office holders.

1126.1. Are public office functions a trade or business?

The performance of functions of a public office is excluded by the Social Security law from the term "trade or business." A "public office" includes any elective or appointive office of the Federal Government, of a State or its political subdivisions, or of a wholly-owned instrumentality.

1126.2. What public offices are covered by this exclusion?

Public offices not considered a trade or business include, among many others, the President, the Vice President, members of the President's Cabinet, governors, mayors, members of Congress, State representatives, county commissioners, judges, county or city attorneys, marshals, sheriffs, registrars of deeds, and notaries public.

1126.3. Are earnings from other activities covered as Social Security earnings?

If a public official engages in an activity that is not part of the function of the public office, the income from that activity may be covered.

1126.4. When is a public official covered as an employee of a State or local government?

A public official may be covered as an employee of a State or local government under the conditions set out in Chapter 10

1126.5. What public officials are covered as employees of the Federal government?

The President, the Vice President, members of the President's Cabinet, and members of Congress, among others, are covered as employees of the Federal Government effective January 1, 1984. (See §940.)

1127. Federal court reporters.

1127.1. How are Federal court reporters paid?

Federal court reporters receive a salary from the Federal Government. They are also paid fees by the litigants for furnishing copies of transcripts.

1127.2. Is the employee's salary covered by Social Security?

The salary paid to the employee is not covered by Social Security, unless work for the Federal Government began after 1983, because it is covered by the Civil Service Retirement System. (See §940.)

1127.3. Are fees counted as income by Social Security?

The fees are counted as income from a trade or business and are covered by Social Security. They are not considered pay for work as a public employee or a public official.

1127.4. How is coverage determined?

The coverage of fees received by State court reporters depends upon the wording of the State law creating these positions. Work that the State law requires to be done is performed by the reporter as an employee. It may be covered by Social Security only if the job is included in a Federal-State coverage agreement as explained in Chapter 10. Fees for work not required by State law are normally earnings from self-employment covered by Social Security.

1128. When may members of certain religious groups receive an exemption from the Social Security tax?

As a member of certain religious groups, you may qualify for an exemption from the Social Security tax. You must waive your rights to all benefits under the Social Security Act, including hospital insurance benefits. You may be either an employee or self-employed. The following requirements must also be met:

- A. You must be a member of a recognized religious sect that has established tenets and teachings by which you are conscientiously opposed to accepting benefits under a private or public insurance plan. This includes benefits such as payments in the event of death, disability or retirement, or payments towards the cost of medical care (including the benefits of any insurance system established by SSA);
- B. Beginning after December 31, 1988, your wages are not subject to Social Security tax when you are paid by your employer if you and your employer are members of such a religious group. Both you and your employer must have approved applications for exemptions as provided in §1129. The employer for the purpose of this exemption is:
 - 1. A self-employed individual;
 - 2. A partnership provided all the partners have approved exemptions;

3. Effective with remuneration paid after December 31, 1988, a church or a church-controlled organization if the organization has in effect an exemption from payment of Social Security taxes (IRS Form 8274, *Certification by Churches and Qualified Church-Controlled Organizations Electing Exemption from Employers Social Security Taxes*) on its employees;
- C. You have never received or been entitled to any benefits payable under Title II (Federal Old-Age, Survivors, and Disability Insurance) or Title XVIII (Health Insurance for the Aged and Disabled) of the Social Security Act;
- D. The religious group of which you are a member has been in existence continuously since December 31, 1950; and
- E. The religious group makes reasonable provision for its dependent members and has done so since December 31, 1950.

1129. Claiming the tax exemption.

1129.1. How can the Social Security self-employment tax exemption be claimed?

To claim the exemption, you must file IRS Form 4029 (*Application for Exemption From Social Security Taxes and Waiver of Benefits*) with the IRS. The application for exemption must be filed on or before the due date for the tax return for the first taxable year in which you have self-employment income or are a member of an approved organization.

1129.2. How long does the exemption remain in effect?

Once granted, the exemption remains in effect until you or the religious group of which you are a member ceases to meet the requirements stated in §1128. If the exemption and waiver cease to be effective, any future Social Security benefits are payable only based on your earnings beginning with the first taxable year that the exemption is not in effect.

1130. Ministers, members of religious orders, and Christian Science practitioners.

1130.1. Are ministers self-employed?

Ministers, members of religious orders who have not taken a vow of poverty, and Christian Science practitioners are covered as self-employed for Social Security purposes beginning in 1968, for their services as a minister, member, or practitioner.

1130.2. How are earnings reported?

You should report your income from these services as net earnings from self-employment, even if you perform your services as an employee.

1130.3. Is an exemption available?

Ministers, members, or practitioners who are conscientiously opposed to, or because of religious principles are opposed to, the acceptance of benefits based on their earnings from these services may elect to be exempt from coverage by applying to IRS for an irrevocable exemption. (See §§1131-1132.)

1130.4. Can the exemption ever be revoked?

Under a special provision of the 1977 amendments to the Social Security Act, individuals who had filed for exemption were given an opportunity to revoke the exemption. The revocation had to be filed before the due date of the income tax return for the individual's first taxable year beginning in 1978. Under the Tax Reform Act of 1986, enacted on October 22, 1986, individuals who had filed for exemption were again given an opportunity to revoke the exemption. The revocation had to be filed before the individual became entitled to Social Security benefits and no later than the due date (including any extension) of the Federal income tax return for the individual's first taxable year beginning after the date of enactment. The Ticket to Work and Work Incentives Improvement Act of 1999 allows members of the clergy who previously opted not to be covered under Social Security a two-year window in which to elect to be covered. The provisions of this law apply to services performed in taxable years beginning January 1, 2000. The application for revocation of the exemption must be filed with the IRS no later than the due date of the Federal Income Tax Return (including extensions) for the applicant's **second** taxable year beginning after December 31, 1999. Therefore, the application for revocation must be filed by April 15, 2002 or October 15, 2002 (including all available extensions) respectively.

1130.5. What were the rules before 1968?

Before 1968, a minister, member or practitioner was exempt from coverage as self-employed, unless the person chose to be covered by filing a Form 2031 (*Waiver Certificate To Elect Social Security Coverage for Use by Ministers, Certain Members of Religious Orders, and Christian Science Practitioners*) with the IRS within a specified period. If you chose to be covered, you may not elect to be exempt from coverage for services performed as a minister, member, or practitioner for taxable years ending after 1967.

1130.6. Who is classified as a minister or practitioner?

A minister must be duly ordained, commissioned, or licensed by a church or church denomination. (See §934.)

A Christian Science practitioner is one who is a member in good standing of the Mother Church, the First Church of Christ, Scientist,

in Boston, Massachusetts, and who practices healing in accordance with the teachings of Christian Science. Christian Science practitioners are specifically exempted from licensing by State laws. Some Christian Science practitioners also do work as Christian Science teachers and lecturers.

1130.7. Is income from teaching or lecturing treated differently from that received for work as a practitioner?

Income received by practitioners as teachers and lecturers is treated the same as income from their work as practitioners. Christian Science readers have the status of ordained, commissioned, or licensed ministers, and are covered in the same way as ministers.

1130.8. Are members who have taken vows of poverty covered by Social Security?

A member of a religious order who has taken a vow of poverty is not covered as a self-employed individual, but may be covered as an employee of the order if the order elects Social Security coverage for its members. (See §932.)

1131. Exemptions from self-employment coverage.

1131.1. Who can obtain exemptions from self-employment coverage?

An exemption from self-employment coverage under Social Security can be obtained by:

- A. Any duly ordained, commissioned, or licensed minister of a church, member of a religious order who has not taken a vow of poverty; or
- B. Any Christian Science practitioner who is conscientiously opposed, or because of religious principles is opposed, to the acceptance of Social Security benefits (or other public insurance providing similar benefits) based on services as a minister, member or practitioner.

1131.2. How is an exemption obtained?

An exemption is obtained by the timely filing with IRS of a Form 4361 (*Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders, and Christian Science Practitioners*).

Applications filed after 1986 must also contain a statement that you have informed the ordaining, commissioning or licensing body of the church, or order of your opposition to the acceptance of Social Security benefits.

1131.3. Can the exemption be revoked?

Generally, this exemption is irrevocable. See §1130.4 for exemptions.

1131.4. What income is covered by the exemption?

The exemption applies only to net earnings from the exercise of the ministry, in the exercise of the duties required by the religious order, or from the practice as a Christian Science practitioner. Once having filed a valid application for exemption, a minister, member, or practitioner cannot later acquire Social Security credit for earnings from these services. However, Social Security taxes will continue to be paid by any minister, member, or practitioner filing such a certificate on any other self-employment income or covered wages.

1132. Time limit to file for exemption.

1132.1. What is the time limit to file for an exemption?

The time limit to file for an exemption with the IRS is the due date of the tax return (including extensions) for the second taxable year (whether or not consecutive) in which you had net earnings from self-employment of \$400 or more. Any part of your self-employment earnings of \$400 or more derived from services as a minister, member of a religious order, or Christian Science practitioner applies.

1132.2. When does the application become effective?

A valid application for exemption is effective for the first taxable year ending after 1967 for which you had net earnings of \$400 or more, some part of which is derived from services as a minister, member, or practitioner.

1133. Are services by chaplains self-employment?

No, service by a chaplain who is an ordained, commissioned, or licensed minister as an employee of the U.S., a State or political subdivision, or a foreign government is not self-employment. However, a chaplain may be covered as an employee of a State or local government (see Chapter 10) or as a member of the uniformed services of the U.S. (See §§948-960.)

1134. Crews on fishing boats.

1134.1. What fishing activities are considered a trade or business?

Services performed after December 31, 1954, by a person on a boat engaged in catching fish or other forms of aquatic life constitute a trade or business if the following conditions are met:

- A. An arrangement exists between the person and the owner or operator of the boat whereby the person does not receive any remuneration other than a share of the catch or a share of the proceeds of the sale of the catch;

- B. The amount of the share depends on the amount of the catch; and
- C. The operating crew of the boat is normally made up of fewer than 10 persons.

If all of the conditions are met, with one exception, the person is self-employed.

1134.2. What exception applies?

The exception applies if:

- A. You received a share of a boat's catch of fish or other aquatic animal life (or a share of the proceeds therefrom) after December 31, 1954, and before October 4, 1976, for services performed on the boat after December 31, 1954; and
- B. The boat's owner or operator reported such share as wages under the Federal Insurance Contributions Act (FICA).

If one or more of the three conditions in 1134.1 is not met or the exception applies, the person's status must be determined under common-law rules. (See §§802-823.)

1134.3. What rules apply after 1994?

Services after 1994 constitute a trade or business if you continue to meet all the requirements above and receive certain cash remuneration that:

- A. Does not exceed \$100 per trip;
- B. Is contingent on a minimum catch; **and**
- C. Is paid solely for additional duties (such as mate, engineer, or cook) for which additional cash remuneration is traditional in the industry.

1134.4. How is the size of the crew calculated?

The operating crew of a boat is treated as made up of fewer than 10 individuals if the average size of the operating crew on trips made during the preceding four calendar quarters consisted of fewer than ten individuals.

1134.5. When is the provision effective?

The new provision provided above is effective for payments after December 31, 1994. In addition, the provision applies to a payment made after December 31, 1984, and all years before January 1, 1995, unless the payer subjected the payment to FICA tax.

1134.6. If the conditions are not met, what rules apply?

If all of the conditions with respect to services performed after 1994 are not met, apply common-law rules.

1135. Real estate agents and direct sellers.

1135.1. Are real estate agents self-employed?

Effective January 1, 1983, certain qualified real estate agents are treated as self-employed persons. To be considered self-employed, you must:

- A. Be a licensed real estate salesperson;
- B. Derive substantially all payment received for services performed as a real estate salesperson directly from sales or other output, such as appraisal activities, rather than from the number of hours worked; and
- C. Perform the services under a written contract or agreement which stipulates that you will not be treated as an employee with respect to the services for Federal tax purposes.

1135.2. What direct sellers are self-employed?

Effective January 1, 1996, The Small Business Job Protection Act of 1996, H.R. 3448, Section 1118 expanded the definition of "Direct Sellers" to include persons engaged in the delivering or distribution of newspapers or shopping news for Federal income tax purposes. To be considered self-employed, you must:

- A. Be engaged in the trade or business of selling (or soliciting the sale of) consumer products:
 - 1. To any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis, for resale (by the buyer or any other person) in the home or in other than a permanent retail establishment;
 - 2. In the home or in other than a permanent retail establishment; or
 - 3. Be engaged in the trade or business of the delivering or distribution of newspapers or shopping news (including any services directly related to such trade or business);
- B. Derive substantially all payment for services performed as a direct seller directly from the sales of the product or the performance of services such as motivation, training, and recruitment activities, rather than from the number of hours worked; and
- C. Perform the services under a written contract or agreement that stipulates you will not be treated as an employee with respect to the services for Federal tax purposes.

1135.3. What are the rules if these conditions are not met?

If all conditions are not met, your status as a real estate agent or direct seller must be determined under the common-law rules. (See §§802-823.)

1136. Certain church employees treated as self-employed.

1136.1. Can churches exclude income from employees from Social Security taxes?

Any church or church-controlled organization in existence on September 30, 1984, opposed for religious reasons to the payment of Social Security taxes, could make an election by October 31, 1984, to exclude from employment the services performed by its employees.

Any organization created after September 30, 1984, must file prior to the first date on which a quarterly employment tax return would otherwise be due if it wishes this exclusion.

1136.2. How is the exemption filed?

An election is made by filing with the IRS Form 8274 (*Certification by Churches and Qualified Church-Controlled Organizations Electing Exemption from Employers Social Security Taxes*). This election applies to services performed after 1983.

1136.3. What is the impact of excluding services from Social Security?

Where the exclusion is applicable, the services of those employees affected will be treated as services in a trade or business and covered as self-employment.

All present and future employees of churches and qualified church-controlled organizations that elect to exclude their employees' services from employment for Social Security purposes will be liable for self-employment taxes with respect to income from such services performed on or after January 1, 1984. Beginning with 1986, these persons must compute their "church employee income" separately from other earnings they may have from any other trade or business.

1136.4. How is "church employee income" defined?

For this purpose, "church employee income" is the gross income for service as an employee of the church. No deductions are made. The income is subject to \$100 rather than \$400 floor taxation and coverage (see §1201.1). The limitations of \$100 unreduced by expenses also applied to income in 1984 and 1985.

1136.5. Does the exemption apply to church employee income?

As of 1986, the exemption from self-employment tax on grounds of religious belief (see §1128) does not apply to "church employee income."

1136.6. Is the exemption revokable?

The Tax Reform Act of 1986 permits a church or church-controlled organization that has elected not to pay Social Security employer taxes

to revoke its election. This provision is effective as of October 22, 1986, the date of enactment of the Tax Reform Act of 1986.

CHAPTER 12

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NET EARNINGS FROM SELF-EMPLOYMENT — GENERAL

1200. Net earnings from self-employment.

1200.1. How are net earnings from self-employment calculated?

To calculate the net earnings from self-employment, follow the steps below:

- A. Add up your total gross income as calculated under the income tax law. Include income from all your trades and businesses.
- B. Subtract all the deductions, including the allowances for depreciation that you are allowed when you calculate your income tax from the result in (A). This gives you your net earnings.

Note: If you have more than one business, calculate net earnings by adding up the net profits or losses from all the businesses. Net earnings also include any ordinary income or loss from partnerships. If any part of your income is included in gross earnings from self-employment, expenses connected with this income cannot be deducted.

1200.2. Are there other ways of calculating net earnings from self-employment?

Under certain circumstances, optional methods of computing net earnings from self-employment are available. For a discussion of these methods, see §§1233-1235 and §§1241-1244.

1200.3. What resources are available to help with calculations?

Definitions of terms used in calculating income for income tax purposes also apply to calculating net earnings from self-employment. For further information on these calculations, see the tax guides available from any Internal Revenue Service office, especially: *Farmer's Tax Guide*, Internal Revenue Service Publication No. 225, and *Tax Guide for Small Business*, Internal Revenue Service Publication No. 334.

1201. Self-employment income.

1201.1. What is "self-employment income"?

Self-employment income means your net earnings from self-employment for a taxable year. The following qualifications must be met:

- A. Your net earnings for the taxable year must be at least \$400;

Note: Certain church employees who are treated as self-employed must report earnings of \$100 or more (see §1136). See §§1233-

1235 and §§1241-1244 about the optional methods of computing net earnings.

- B. Your trade or business must be covered by Social Security; and
- C. If you are a nonresident alien, your earnings are not considered self-employment income except as provided by an international agreement (see § 107).

1201.2. What are the limits on self-employed income?

Self-employment income cannot exceed the amounts listed in the table below. Any wages covered by Social Security that you earned during the taxable year must be subtracted from the limits shown below.

Self-Employment Income Limits

If the taxable year is...	Then your self-employment income limit is...
1951-1954	\$3,600
1955-1958	\$4,200
1959-1965	\$4,800
1966-1967	\$6,600
1968-1971	\$7,800
1972	\$9,000
1973	\$10,000
1974	\$13,200
1975	\$14,100
1976	\$15,300
1977	\$16,500
1978	\$17,700
1979	\$22,900
1980	\$25,900
1981	\$29,700
1982	\$32,400
1983	\$35,700

If the taxable year is...	Then your self-employment income limit is...
1984	\$37,800
1985	\$39,600
1986	\$42,000
1987	\$43,800
1988	\$45,000
1989	\$48,000
1990	\$51,300
1991	\$53,400
1992	\$55,500
1993	\$57,600
1994	\$60,000
1995	\$61,200
1996	\$62,700
1997	\$65,400
1998	\$68,400
1999	\$72,600
2000	\$76,200
2001	\$80,100

1201.3. What are the limits beginning in 1998?

Amounts for taxable years beginning in 1998 are subject to automatic increases in multiples of \$300 if average total wages rise enough to cause a cost-of-living increase in benefits.

1201.4. Where is the amount for the current year published?

The amount for a taxable year is published in the *Federal Register* on or before November 1 of the year immediately preceding that taxable year.

1201.5. Are net earnings from self-employment and self-employment income the same?

Net earnings from self-employment and self-employment income are not the same. Only that part of net earnings that is included in the term “self-employment income” is subject to Social Security self-employment taxes and counted for Social Security benefit purposes. (However, even if net earnings do not count for these purposes, they are included in figuring the amount of benefits that must be withheld under the earnings test. See Chapter 18.)

1202. What are gross business receipts?

Gross business income defined. Gross business receipts for Social Security purposes include, among other things:

- A. Professional fees received;
- B. Compensation for services (other than as an employee);
- C. Pay for work done on contract; and
- D. Income from the sale, exchange, or conversion of goods held for sale in the ordinary course of business.

Gross business receipts do not include:

- A. Income from the sale, exchange, or conversion of business assets that are not part of business inventory, such as delivery trucks and office equipment;
- B. Dividends, interest, and rental income from real property; or
- C. Gains and losses from the sale or exchange of capital assets, except those realized in the course of business by an options or commodities dealer.

Note: In computing gross income, the cost of goods that a person takes from the business for personal and family use must be excluded from the total amount of merchandise bought for sale.

1203. Are retirement payments received from partnerships included in net earnings?

If you are a retired partner receiving retirement payments from a partnership of which you are a member or a former member, the payments are excluded from net earnings from self-employment (effective with taxable years ending on or after December 31, 1967) if:

- A. The payments are made under a written plan of the partnership that meets the requirements prescribed by the Secretary of the Treasury. The written plan must also provide for periodic payments because of retirement, to partners generally or to a class or classes of partners, to continue at least until such partner's death; and

- B. You provided no services in any business conducted by the partnership (or its successors) during the taxable year of the partnership ending within or with the taxable year in which you received payments; and
- C. At the end of the partnership's taxable year referred to in (B) above, the other partners have no obligation to you other than for the retirement payments under the plan; and
- D. Your share in the capital of the partnership has been paid in full by the end of the partnership's taxable year referred to in (B) above.

1204. How is income credited when a partner dies?

To calculate a partner's share of the profit or loss, follow the steps below:

- A. Calculate the total profit or loss for the partnership.
- B. Deduct any guaranteed payments from the total profits or losses.
- C. Assume that the profits or losses occurred at a uniform rate throughout the year.
- D. Multiply the monthly profit or loss from (A) by the number of months the partner was living, counting the month of death as a full month, and by the partner's proportional share in the partnership.
- E. Add a proportion of the guaranteed payments equivalent to the number of months the partner was living during the taxable year.

Calculating partners' share of partnership when a partner dies.

- A. John, Mary, and David were partners sharing in profits and losses in the proportions of 2/9, 3/9, and 4/9 respectively.
- B. During the partnership taxable year which ended June 30, 1987, the partnership profit amounted to \$15,000.
- C. John died October 15, 1986.
- D. John had a guaranteed payment of \$2,400 a year because of an investment in the business.
- E. Deducting John's share because of the capital interest (guaranteed payment) leaves \$12,600 or \$1,050 per month.
- F. John is entitled to 2/9 of \$1,050 for 4 months or \$933.33.
- G. John is also entitled to 4/12 of the \$2,400 guaranteed payment because of the interest in the business.
- H. Adding \$800 to \$933.33 gives \$1,733.33 as John's distributive share of partnership earnings that is creditable for Social Security purposes for the year of John's death.

1205. Deduction of business expenses.

1205.1. What expenses must be deducted?

All allowable business expenses, except those incurred by certain church employees who are treated as self-employed (see §1136), must be deducted in computing net earnings from self-employment.

1205.2. Who is responsible for taking the deduction?

If you are an operator of a business who becomes liable for a business expense, you must take the deduction even if the expense is paid by someone else.

If you rent the property where you conduct your business and your son pays the rent, you must deduct the rent because you became liable for it. If your son owns the property where the business is conducted, you cannot deduct expenses such as taxes, insurance, and repairs, paid by your son in connection with the property because you did not become liable for them.

1205.3. Must deductions be taken for non-cash expenses?

Yes, you must take a deduction for an expense even though it is paid with something other than cash. Expenses paid in property are deductible, usually in the amount of the cost or “adjusted basis” (generally its cost less the amount it has depreciated) of the property transferred.

1206. Dividends on stock and interest on bonds.

1206.1. Are dividends on stock and interest on bonds included as earnings?

Dividends on stock and interest on bonds do not count for Social Security purposes unless you receive them in the course of business as a dealer in stocks or securities.

Note: The term “bond” includes debentures, notes, certificates and other evidence of indebtedness issued with interest coupons or in registered form by a corporation. Bonds also include Government bonds.

1206.2. Is other interest included as earnings?

Other interest you receive in the course of business does count for Social Security purposes. For example, if you are a pawnbroker and receive interest on loans or a merchant and receive interest on accounts or notes receivable, you must include this interest in computing net earnings from self-employment.

1207. Is interest received by dealers counted as earnings?

If you are a dealer in stocks and securities, the dividends and interest that you receive from stocks and bonds while they are in your inventory are earnings from self-employment. Securities bought by a dealer but not held for resale are not part of the trade or business. They are considered a personal investment. The interest and dividends received do not count as earnings from self-employment.

Note: You are a dealer in stocks and securities if:

- A. You are a merchant with an established place of business;
- B. You regularly engage in buying stocks and bonds in your own name;
- C. You sell stocks and bonds to customers for a profit.

Dealers do not buy for the purpose of obtaining dividends or interest, but for “stock in trade” as another merchant buys hardware or dresses or groceries.

1208. Is interest received by traders counted as earnings?

If you are a trader in stocks or securities, your interest and dividends are not counted as earnings for Social Security purposes.

Note: You are a trader if you buy and sell stocks and bonds for your own account only.

1209. Is interest received by a dealer/stockbroker counted as earnings?

Frequently, a dealer in securities will also be a stockbroker. If you fit both categories, profits earned as a broker and those earned as a dealer in securities are both included in net earnings. Dividends and interest paid on securities while they are part of your stock in trade are also counted.

Note: You are a stockbroker if you buy and sell stocks and bonds as an agent of the actual owner. As a stockbroker, you do not buy or sell in your own name. Your earnings come from commissions rather than from selling the stock or bond at a profit.

1210. How is dividend and interest income calculated for partnerships?

Partnerships are treated as individuals when it comes to the dividend and interest exclusion. Dividends and interest on securities held for investment are excluded from net earnings of the partners. However, if a partnership is in business as a securities dealer, income on the securities held for resale by the partnership is included as net earnings of the partners.

1211. Are all gains and losses included in calculating earnings?

When calculating earnings for Social Security purposes, you can exclude gains or losses from the disposition of certain properties if you do any of the following:

- A. Sell or exchange a capital asset, except in the course of business of an options or commodities dealer;
- B. Cut timber or dispose of timber, coal or iron ore, even though held primarily for sale to customers, if section 631 of the Internal Revenue Code applies; or
- C. Sell, exchange, involuntarily convert or make other disposition of property that is not:
 - 1. Stock in trade or other property of a kind that would be included in inventory if it was on hand at the close of the taxable year; or
 - 2. Property held primarily for sale to customers in the ordinary course of business.

1212. What rental allowances must ministers include in net earnings?

If you are a minister, you must include the following in net earnings from self-employment (unless you are granted an exemption from coverage under Social Security (see §1131):

- A. The rental value of a home furnished as part of your compensation;
- B. A rental allowance paid as part of your compensation; and
- C. The value of any meals or lodging furnished in connection with services performed in the exercise of your ministry.

Note: The Internal Revenue Code excludes these items from gross income for income tax purposes.

1213. What rental income must be included in calculating earnings?

Rental income you receive from real estate does not count for Social Security purposes unless:

- A. You receive rental income in the course of your trade or business as a real estate dealer (see §§1214-1215);
- B. Services are rendered primarily for the convenience of the occupant of the premises (see §1218); or

- C. In the case of farm rental income, you materially participate in the production or in the management of the production of farm commodities on land rented to someone else. (See §§1221-1232.)

1214. Rent received by real estate dealers.

1214.1. Is rent received by real estate dealers counted as earnings?

Rent received by real estate dealer. Rentals from real estate being held for sale in the ordinary course of a trade or business are earnings from self-employment. The profit a dealer gets from selling the real estate is also earnings from self-employment.

Note: You are a real estate dealer if you are engaged in the business of selling real estate for a profit. Real estate is a dealer's stock in trade. As a real estate dealer, you are available to buy and sell property and are regularly engaged in negotiating sales of property that you own.

1214.2. Is all rental income received by real estate dealers counted as earnings?

Property held by real estate dealers for personal use or as investment is not held for sale. Rentals received from such property are not considered earnings from self-employment because they are not received in the regular course of a trade or business. Such property is not "stock in trade."

1215. What items are counted as earnings for real estate brokers?

If you are a real estate broker, the following items are counted as earnings:

- A. Fees you receive for buying, selling, and renting properties owned by someone else; and
- B. Income you receive from the sale or rental of properties for which you have taken title in your own name until you can find a buyer.

Note: You are a real estate broker if you buy, sell or rent properties owned by someone else.

RENTAL INCOME — GENERAL

1216. Is rental income counted as earnings?

Income you receive from renting rooms or apartments does not count for Social Security purposes unless you provide personal services for the convenience of the occupant.

Income you receive from renting property for business or commercial use, such as a store, factory, office space, etc. is usually excluded from

earnings from self-employment. However, if you provide services primarily for the convenience of the tenant beyond those usually provided with rental of apartments or other space for occupancy only, rental income may be counted as earnings.

1217. Services normally provided by landlords.

1217.1. What services are normally provided by landlords?

Services normally provided by landlords include furnishing heat, light, water, elevators, painting, repairing and redecorating, maintaining and replacing items furnished, collecting trash and garbage, cleaning hallways, common bathrooms, and entrances and cleaning the premises after the tenant leaves. These types of services are not considered personal services for the convenience of the occupant; rather, they are ordinary services performed by landlords.

1217.2. If these services are provided, is rental income counted as earnings?

When you provide these services to your tenants, the rental income is not counted as earnings.

1218. Services provided for convenience of the occupant.

1218.1. What services are provided primarily for the convenience of the occupant?

These services may consist of room service, making beds, furnishing linens and towels, providing laundry service, preparing and serving meals, sweeping and mopping floors, dusting and cleaning, washing dishes, cleaning bathroom fixtures, emptying wastebaskets and picking up and replacing scattered or misplaced articles.

1218.2. If these services are provided, is rental income counted as earnings?

If you provide services rendered for convenience of occupant, services primarily for the convenience of the occupant of the dwelling space, the rental income is counted as earnings.

Note: No particular service or combination of these services will necessarily cause the income to be counted for Social Security purposes. Each case must be considered individually.

1219. Are payments for parking lots, warehouses, and storage garages counted as earnings?

Payments for the use or occupancy of space in parking lots, warehouses or storage garages are included in determining net earnings from self-employment.

1220. Rental income from two or more property operations.

1220.1. How is rental income calculated for more than one property?

Rental income from two or more property operations is treated separately in figuring net earnings from self-employment. Your rental income does not count for Social Security purposes even if you have income from another property, such as a boardinghouse, which is included in earnings from self-employment.

1220.2. If part of the property is rented with services and part is rented without services, how is income calculated?

If you rent part of your property and provide significant services and part without such services, consider each separately. Income from the property rented with services is counted while the income from the other property is not counted. You should charge the expenses attributable to each type of operation accordingly.

RENTAL INCOME — FARM

1221. Does farm rental income count as net earnings?

Farm rental income counts as farm rental income counts if landlord materially participates net earnings from self-employment if, as part of the rental arrangement, you materially participate in the production or management of the production of the crop or livestock. If you do not materially participate, farm rental income does not count for Social Security purposes.

Note: “Landlord” means anyone who has rented to another individual, whether the land is owned or rented by the individual from a third party.

1222. How is material participation established in a farm rental arrangement?

The farm rental arrangement must state that you will materially participate in the production of the farm commodities. The arrangement may be in writing or it may be oral, but should be the mutual understanding between you and your tenant. If the agreement is oral, you must be able to prove that it provides for your material participation. The written agreement or lease may not cover all the details of the understanding between you and the tenant. If the written agreement is supplemented by an oral agreement, material

participation may be established if you actually participated in line with the oral agreement.

1223. How is material participation in farm production determined?

Four tests are used in determining whether you are materially participating in the production of farm commodities.

1224. What are the criteria for Test I: Financial Contribution, Periodic Inspection, and Consultation?

You meet the conditions for Test I if you have an arrangement for participation and do any three of the following:

- A. Advance, pay, or stand good for a significant part of the cost of production;
- B. Furnish a significant part of the tools, equipment, and livestock used in producing the commodities;
- C. Make periodic inspections of the production activities; or
- D. Advise and consult with the tenant periodically.

1225. What combination of activities is required to demonstrate material participation in farm rental agreements?

A combination of factors showing material participation is required. Advancing, paying or standing for a significant part of production costs or furnishing a significant part of the equipment, tools and livestock helps to show that you may be materially participating. However, these two factors alone are not enough. Even paying all the expenses and furnishing all the equipment, tools and livestock are not enough to establish material participation. However, if you also participate in some other way to a significant degree, such as periodically inspecting the crop or advising and consulting with the tenant, you are participating to the required degree.

1226. What constitutes a “significant part” of production costs or equipment?

No precise amount can be defined as a significant part of the cost of production or of the tools, equipment and livestock. One-third or more of the total value of the tools, equipment and livestock used in producing the commodity or one-third or more of the total cost of producing the commodity would usually be considered a significant part. Whether less than one-third is a significant part depends on individual circumstances.

1227. Costs of production.

1227.1. What expenses are included in costs of production?

Costs of production include expenses that relate directly to the production of the commodity, such as feed, seed, plants, fertilizer, fuel, machinery repair, pesticides and other supplies.

1227.2. What expenses are not included in costs of production?

Living expenses paid by the landlord for the tenants; overhead expenses such as taxes, depreciation, etc.; and the value of the labor furnished by the tenant cannot be counted in figuring the costs of production.

1228. Periodic inspection of production activities.

1228.1. What is included in periodic inspection?

Periodic inspection of production activities counts toward material participation if it is conducted to promote production. To be counted, inspection of production activities must be for the purpose of seeing whether:

- A. The farm work is being done properly;
- B. Whether anything else needs to be done; or
- C. When the work should be done.

Mere inspection to determine the condition of the buildings, fences or other improvements does not count.

1228.2. When are periodic inspections conducted?

The nature and size of the farming activities determine how often inspections need to be done. Making inspections during the soil preparation, planting, cultivating, and harvesting seasons count even if there is no inspection activity during some of the growing season. By itself, inspecting the farming activities, regardless of how often it is done, is not enough. However, regular and frequent inspections of the production activities, combined with other things showing participation, may be enough.

1229. Advice and consultation.

1229.1. What is considered advice and consultation?

To be counted toward material participation, your advice and consultation must be in connection with what, where, when, or how things are to be done in producing the commodities. It need not be connected directly with the actual planting, cultivating and harvesting work, but may be connected with:

- A. Deciding what crops are to be planted;
- B. The type of seed to be used;
- C. How much fertilizer or spray should be used; or
- D. When and at what price the crops should be sold.

Note: Advice and consultation does not count toward material participation unless the arrangement provides for it.

1229.2. Can advice and consultation alone considered material participation?

No, advice and consultation alone, regardless of how frequent, is not material participation. If you do other things, such as making periodic inspections and doing some of the work, this may be enough, together with advice and consultation, to be material participation.

1230. What are the criteria for Test II: Decisions Affecting Success of Enterprise?

Under Test II, you may be materially participating if you are regularly and frequently making decisions that significantly affect the success of the enterprise. Making final decisions contributing to or affecting the success of the enterprise count toward material participation. These decisions include:

- A. What, when, and where to plant, cultivate, dust or spray;
- B. When to harvest the crop;
- C. What goods to buy, sell or rent;
- D. What standards to follow; and
- E. What records to keep, reports to make and bills to pay, etc., counts toward material participation.

1231. Test III: 100 hours of work over 5-week period.

1231.1. What are the criteria for Test III?

The criteria for Test III are:

- A. If you work at least 100 hours spread over five or more weeks (not necessarily consecutive) on activities connected with the production of the crop, you are materially participating;
- B. If you work less than 100 hours or conduct the 100 hours of work in fewer than five different weeks, you may still be materially participating if the work done adds up to a significant contribution to the production of the crop; or
- C. If the work alone is not enough to establish material participation, it is considered along with the other things that are done that help establish material participation.

1231.2. Must the work involve physical activity in farming?

No, you do not have to help with the actual plowing, hoeing, etc. The work may be making purchases, keeping the records, caring for the livestock or repairing buildings, fences and farm equipment used in connection with the production of the crop.

1231.3. Does working for the tenant count toward material participation?

No. If you work as the employee of the tenant and if you are paid separately, your work does not count toward material participation.

Note: If you are in doubt, consult your nearest Social Security office or any Internal Revenue Service office.

1232. If Tests I - III are not met, is material participation still possible?

If Tests I-III (§§1224-1231) are not met, your total activities may count as material participation. Those tests are for the more common types of arrangements. There may be different types of situations or combinations of factors that, based on the total picture, make for material participation.

Note: If you are in doubt, consult your nearest Social Security office or any Internal Revenue Service office.

OTHER METHODS OF COMPUTING EARNINGS

1233. Are other methods of computing net earnings for self-employment available?

If certain requirements are met, optional methods of computing net earnings Optional Methods of Computing Net Earnings from self-employment are available to individuals engaged in the following activities:

- A. Farm self-employment (see §1235, farm option);
- B. Non-farm self-employment (see §1242, non-farm option); or
- C. Both farm and non-farm self-employment (see §1244).

The purpose of the optional methods of computation is to enable a self-employed individual to maintain Social Security coverage during years of very low net earnings or a net loss.

1234. What is gross income for the optional method of reporting?

Gross income for optional method of reporting is the gross receipts of the activity minus the cost of items purchased and sold in carrying on that activity. Gross income for this purpose is determined as follows:

- A. If you are a single proprietor, use the gross profits as computed on *Schedule F* (farm) or *Schedule C* (non-farm), Form 1040, for Federal income tax purposes.
- B. If you are a partner, first compute the gross income of the partnership as for a single proprietorship. Then allocate the gross income is allocated to each partner on the agreed profit-sharing basis.
- C. If partners received guaranteed payments for services or use of capital, determine each partner's gross income as follows:
 1. Determine the partnership's gross income as for a single proprietorship;
 2. Deduct the total of all guaranteed payments made to all partners for services or use of capital from the partnership's gross income;
 3. Allocate the balance of the partnership's gross income to each partner on the agreed profit-sharing basis (this represents each partner's distributive share of the partnership's gross income); and
 4. Add the guaranteed payment to the distributive share of the partnership's gross income. The total represents each partner's gross income from the partnership.

1235. Optional method of figuring net farm earnings.

1235.1. When is the optional method of computing net earnings from farm self-employment available?

The optional method of computing net earnings from farm self-employment is available for any taxable year for which you qualify.

1235.2. How is the optional method of calculating net earnings used?

The farm option operates in either two ways:

- A. If you have gross income from farming of \$2,400 or less during a taxable year beginning after 1965, you may count as net earnings from farming either the actual net farm earnings or two-thirds of the gross farm income; or

B. If your gross income from farming is over \$2,400 and the net farm earnings are less than \$1,600 during a taxable year beginning after 1965, you may count as net earnings from farming either the actual net farm earnings or \$1,600.

1235.3. Is the optional method always available?

No. If your gross farm income is more than \$2,400 and his or her actual net farm earnings are over \$1,600, you must report the actual net farm earnings. In this situation, the optional method of reporting farm income is not applicable.

Your gross income was \$2,700 and the net farm profit was \$800. You may report either \$800 or \$1,600 as the net farm earnings. Even if the farm had operated at a loss, you still could have reported \$1,600. If the net farm profit had exceeded \$1,600, however you would have had to report actual net farm profits as net earnings from farm self-employment. (See §1241 for table illustrating application of the option.)

1235.4. If the optional method is used for one year, must it be used in years afterward?

No. If the optional method is used for one year, it does not have to be used for the next. However, if it is used, it must be applied to all farm earnings from self-employment for that year. It may be used to increase or decrease reported net farm earnings, and it may be used even if the farming operation resulted in a loss.

1236. May grazing income be included in gross farm income?

Grazing income may be included in gross farm income under certain conditions. The income is included if you perform services beyond those which landlords usually perform for the protection, maintenance, or improvement of your own land. These extra services may include:

- A. Regular counting of the livestock;
- B. Looking for strays;
- C. Veterinary services;
- D. Providing food, salt and water;
- E. Protecting the livestock from exposure to disease from other animals in the same pasture; or
- F. Other services showing that you have responsibility for the care of the livestock.

1237. Is income from the sale of farm products grown in prior years included in gross farm income?

Income from the sale of farm products grown or raised in prior years is included in gross farm income, even if you stopped farming before the year in which you received the income.

If you sell grain in 1992 that was raised in 1991, the gross farm income is for 1992 even if you stopped farming in 1991.

1238. Are federal agricultural program payments included in gross farm income?

Federal agricultural program payments to farm operators in cash, materials or services are generally included in gross farm income. If you are a landlord, payments made to you are included only if you meet the "material participation" requirements described in §§1221-1232.

1239. Is the landlord's share of a crop included in gross farm self-employment income?

The landlord's share of a crop is not included in the gross farm income of a self-employed sharefarmer:

- A. If you are a self-employed sharefarmer and turn over the landlord's share of the crop directly to the landlord, you must exclude the value of that share from your gross farm income; or
- B. If you sell the landlord's share as well as your own, the amount turned over to the landlord must be excluded from your gross farm income. In these situations, the sharefarmer acts as an agent for the landlord.

1240. Income from the sale of timber.

1240.1. Is income from the sale of timber included in gross farm income?

Income from the sale of timber is included in gross farm income if:

- A. The timber was grown on the farm;
- B. The income from the timber sales is not treated as a capital gain; and
- C. The timber operation is incidental to or tied in with the operation of the farm so that farming and timber activities constitute one business.

1240.2. When is income from the sale of timber excluded from gross farm income?

If you are a farmer who receives substantial income from timber sales and if you have employees who are assigned to work only in timber operations, you generally would be considered to have two businesses: a farm business and a timber business. Income from the timber operations is not considered as farm income but rather is treated as non-farm income for use of the options.

1241. Summary table for optional methods of computing farm self-employment income.

The following table summarizes the effect of the optional method of figuring the amount of self-employment income to be reported when all your earnings are from farm self-employment for taxable years beginning after 1965:

Optional Method: Farm Self-Employment Income

If the gross farm income is...	And the net farm profit is...	Then the self-employment income to be reported is:	
		Regular method	Optional method
Under \$600	Under \$400	None	None
Under \$600	\$400 to \$599	Actual net	None
\$600 to \$2,400	Under \$400	None	Two-thirds of gross
\$600 to \$2,400	\$400 to \$2,400	Actual net	Two-thirds of gross
More than \$2,400	Under \$400	None	\$1,600
More than \$2,400	\$400 to \$1,599	Actual net	\$1,600
More than \$2,400	\$1,600 and over	Actual net	Actual net*

*** Option cannot be used.**

1242. Optional method of computing non-farm net earnings.

1242.1. What is the optional method of computing non-farm net earnings?

The optional method of computing net earnings from non-farm self-employment is similar to the farm option, but is more limited in its operation. It may be used for no more than five taxable years, which need not be consecutive. It is available for a taxable year only if:

- A. Your actual net earnings from non-farm self-employment are less than \$1,600 and less than two-thirds of the gross non-farm income; and
- B. Your actual net earnings were \$400 or more (including your distributive share of the net income or loss from any partnership of which you are a member) in at least two of the three consecutive years immediately preceding the taxable year for which you elect to use the non-farm option; and
- C. If you are engaged in both non-farm and farm businesses, the actual non-farm net earnings plus the actual farm earnings (or optional farm earnings, if computed under §1235) are less than \$1,600. The non-farm option operates in either of two ways if the above requirements are met.
 - 1. If your gross income from non-farm self-employment is \$2,400 or less during a taxable year beginning after 1972, then you may count as net earnings from non-farm self-employment either: (1) the actual net non-farm earnings; or (2) two-thirds of the gross non-farm income. You may not count less than the actual net earnings from non-farm self-employment.
 - 2. If your gross income from non-farm self-employment is more than \$2,400 and the net non-farm earnings are less than \$1,600 during a taxable year beginning after 1972, you may count as net earnings from non-farm self-employment the actual net non-farm earnings or \$1,600. You may not count less than the actual net earnings from non-farm self-employment.

You are engaged in non-farm self-employment only and had non-farm gross income of \$2,700. Your net non-farm profit was \$800. You may report either \$800 or \$1,600 as your net non-farm earnings. Even if you had operated at a loss, you still could have reported \$1,600. If your net non-farm profit had exceeded \$1,600, you would have to report your actual net non-farm profits as your net earnings from non-farm self-employment. (See §1243 for table illustrating application of the option.)

1242.2. If the optional method is used for one year, must it be used in years afterward?

No. If the optional method is used for one year, it does not have to be used for the next year. However, if it is used, it must be applied to all farm earnings from self-employment for that year. It may be used only to increase reported net non-farm earnings and may be used even if the non-farm operation resulted in a loss.

1243. Summary table for optional methods of computing non-farm self-employment income.

The following table summarizes the effect of the optional method of computing the amount of self-employment income from a non-farm business to be reported for taxable years beginning after 1972:

Optional Method: Non-Farm Self-Employment Income

If the gross farm income is...	And the net farm profit is...	Then the self-employment income to be reported is:	
		Regular method	Optional method
Under \$600	Under \$400	None	None
Under \$600	\$400 to \$500	Actual net	Actual net*
\$600 to \$2,400	Under \$400	None	Two-thirds of gross
\$600 to \$2,400	\$400 to \$1,599	Actual net	Two-thirds of gross
\$600 to \$2,400	\$1,600 to \$2,400	Actual net	Actual net*
More than \$2,400	Under \$400	None	\$1,600
More than \$2,400	\$400 to 1,599	Actual net	\$1,600
More than \$2,400	\$1,600 and over	Actual net	Actual net*

*** Option cannot be used because an individual using the non-farm option may not declare less than actual net earnings from self-employment.**

1244. Combining farm and non-farm net earnings.

1244.1. What options are available if both farm and non-farm self-employment are involved?

If both farm and non-farm self-employment is involved, both options (farm and non-farm) may be available. If you choose to use both options, the farm option (see §1235) is computed without regard to non-farm self-employment. However, the non-farm option (see §1242) requires consideration of farm self-employment to establish eligibility for its use.

1244.2. How are the options applied to determine net earnings?

The options are applied separately to the gross income from each activity to determine the reportable net earnings from each activity. However, if you are engaged in both activities during a taxable year beginning after 1972, you must combine net earnings or loss (either actual net earnings or earnings as computed under the farm and/or the non-farm optional methods) from both activities. Reporting the total net amount permits the use of several alternatives:

- A. Report the actual net earnings from either activity with the optional net earnings from the other activity;
- B. Report the actual net earnings from both activities; or
- C. If otherwise eligible, use the option in computing net earnings from both activities.

1244.3. What is the maximum allowable total for combined net earnings?

If you elect to use both the farm option and the non-farm option in any one taxable year, the maximum combined total amount of your net earnings from self-employment cannot exceed \$1,600.

OTHER INCOME

1245. Income of U.S. citizen or resident in business outside the U.S.

1245.1. Is income earned from a trade or business operated outside the U.S. counted as net earnings?

If you are a U.S. citizen or resident alien, income earned from a trade or business operated outside the U.S. is counted as net earnings from self-employment.

Note: International agreements may provide that the earnings will be covered under the social security program of another country, see §107.

1245.2. How have IRS rules changed regarding income earned outside the U.S.?

For many years, the Internal Revenue Code has provided special deductions or exclusions from foreign earned income of U.S. citizens and residents working outside the U.S. Effective with taxable years beginning after December 31, 1983, however, U.S. citizens or residents engaged in a trade or business outside the U.S. must compute net earnings from self-employment. This is true regardless of any foreign earned income exclusions for which they might be eligible for income tax purposes.

1246. Are exclusions in Section 911 of the Internal Revenue Code applicable to ministers outside the U.S.?

No. If you are a U.S. citizen or resident performing services outside the U.S. related to your ministry or duties required by your order, you must compute net earnings from self-employment, regardless of the exclusions in section 911 of the Internal Revenue Code. Section 911 of the Code relates to earned income from services performed outside the U.S.

CHAPTER 13

WAGES

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1300. Wages for Social Security purposes.

1300.1. What are “wages”?

“Wages” means all payment for services you perform for your employer. Wages do not have to take the form of cash. The cash value of all compensation paid to you in any form other than cash is also considered wages (unless the form of payment is specifically not covered under the Social Security Act).

1300.2. What types of income are considered wages?

Wages include bonuses, commissions, fees, vacation pay, cash tips of \$20 or more a month, and severance pay.

1300.3. What types of income are NOT considered wages?

Types of income that are not wages include capital gains, gifts, inheritances, investment income, and jury duty pay.

1301. Maximum earnings creditable in any one year.

1301.1. What is the maximum amount of wages that can be credited to your record?

The following table lists the maximum amount of wages that can be credited to your Social Security record.

Maximum Earnings Creditable

Year	Maximum Earnings	Year	Maximum Earnings
2000	\$76,200	1981	\$29,700
1999	\$72,600	1980	\$25,900
1998	\$68,400	1979	\$22,900
1997	\$65,400	1978	\$17,700
1996	\$62,700	1977	\$16,500
1995	\$61,200	1976	\$15,300
1994	\$60,600	1975	\$14,100
1993	\$57,600	1974	\$13,200
1992	\$55,500	1973	\$10,800

Year	Maximum Earnings	Year	Maximum Earnings
1991	\$53,400	1972	\$9,000
1990	\$51,300	1968-1971	\$7,800/year
1989	\$48,000	1967	\$6,600
1988	\$45,000	1966	\$6,600
1987	\$43,800	1959-1965	\$4,800/year
1986	\$42,000	1955-1958	\$4,200/year
1985	\$39,600	1951-1954	\$3,600/year
1984	\$37,800	1940-1950	\$3,000/year
1983	\$35,700	1937-1939	\$3,000 per employer/year
1982	\$32,400		

1301.2. How is the maximum wage amount increased each year?

For the years after 1981, the maximum wage amount is usually increased by Congress. If Congress does not increase the maximum amount, it is automatically increased in multiples of \$300 if there is a cost-of-living increase in Social Security benefits. The increased amount is officially published in the *Federal Register* on or before November 1 of the year before it goes into effect.

1302. Actual or constructive payment of wages.

1302.1. When are wages considered “paid”?

Your wages are generally considered paid when they are “actually” or “constructively” paid.

1302.2. What does “actually paid” mean?

Actual payment occurs when you are actually paid in the form of cash, check, bank deposit, or similar form other than cash.

1302.3. What does “constructively paid” mean?

Your wages are constructively paid when:

- A. They have been credited or set aside for you, and you can get them at any time. It does not matter when or how you receive payment, just that you have access to your wages when you want them; or

- B. Your employer intends to pay, set apart, or credit the wages and is able to pay you when due, but fails to do so because of a clerical error or mistake in the mechanics of payment.

1303. Cash-pay tests.

1303.1. When must you meet the cash-pay tests in figuring your wage amount?

In figuring your wage, you must meet the cash-pay tests if you perform any of the following types of work:

- A. Agricultural labor (see §901);
- B. Domestic service in a private home (see §915);
- C. Non-business or casual labor (see §924);
- D. Some services by homeworkers (see §830); or
- E. Tips (see §1329).

1303.2. What cash counts as wages if you meet the cash-pay test?

If you meet the cash-pay test, you must count **all cash** as your wages. If you are a homeworker ((D) above), count both cash and payments-in-kind. Do not count payments-in-kind as wages if you are a worker described in (A), (B), (C), or (E) above, even you meet the cash-pay test.

1303.3. What cash counts as wages if you do NOT meet the cash-pay test?

If you do not meet the cash-pay test, do not count payment as wages for Social Security purposes, even if it is paid in cash. However, you must count all cash pay (except tips that total less than \$20) to the earnings test. (See §1811.)

1303.4. What types of payment are considered cash?

Cash pay for cash-pay tests includes the following:

- A. Cash;
- B. Checks and other monetary forms of exchange;
- C. The income you receive as an employee from the sale of a crop from the farm owner/operator; and
- D. Cash given in place of such items as meals, lodging, car tokens, clothing, etc.

1303.5. What types of payment are NOT considered cash?

Cash pay for cash-pay tests does not include the following:

- A. Payments-in-kind, such as meals and lodging;
- B. A share of crops or animal increase;
- C. Car tokens, clothing, transportation passes, or tickets; and

D. The furnishing of goods or limited credit made available at a store for the maintenance of you and your family.

1304. Pay for work for nonprofit organization.

1304.1. What is the minimum pay test for work for a nonprofit organization?

If you work for a nonprofit organization that does not have to pay Federal income tax under section 501(a) of the Internal Revenue Code (IRC), your earnings are subject to a minimum pay test. Beginning in 1978, as an employee of such an organization, **you must be paid at least \$100 in a calendar year** in order for the payments to count as wages. (Before 1978, such employment was covered only if wages of at least \$50 were earned in a calendar quarter.)

Note: If you work for an organization described in section 401(a) or 521 of the IRC, the above may not apply.

1304.2. How is your payment credited if you meet the minimum pay test?

If you meet the minimum pay test, your payment can be credited for Social Security purposes. If you are an employee of an exempt organization that is a religious, charitable, educational, etc. organization, your payment is covered beginning January 1, 1984. (See §931 for special rules for church or qualified church-controlled organizations.) Your pay may be either cash pay, payments-in-kind, or both.

Before 1984, payment could be credited only if the organization filed an appropriate waiver certificate for its covered employees. (See §931.)

1304.3. How is your payment credited if you do NOT meet the minimum pay test?

If your pay is less than the minimum pay in cash or payments-in-kind during the calendar year, your payment is not counted for Social Security purposes. However, it is still counted for the earnings test. (See Chapter 18.)

1305. Does pay for military service after 1956 count as wages?

Military service you performed after 1956 is covered by Social Security. Basic pay is considered wages for active duty or active duty for training. Inactive duty for training (including weekend drills) is wages after 1987. (See §§948-952.)

1306. Can you receive additional wage credits for military service after 1967?

If you are/were a member of the uniformed services, you may receive additional wage credits (also known as non-contributory wage credits or deemed wages). These credits are in addition to your basic pay. (See §953.)

1307. Can you receive wage credits for military service before 1957?

If you performed military service before 1957, you may receive “gratuitous military wage credits”. You may be eligible for wage credits of \$160 for each month of active duty if you are a veteran who was on active duty in the uniformed services after September 15, 1940, and before January 1, 1957 (see §954). Under certain circumstances, service with allied forces during World War II also qualifies you for gratuitous military wage credits. (See §957.)

1308. Pay for railroad work.

1308.1. Does payment for railroad work generally count as wages for Social Security purposes?

Your pay for railroad work is generally not counted for Social Security purposes because railroad employees have a separate retirement system administered by the Railroad Retirement Board (see Chapter 23).

1308.2. Are there any special cases where railroad work does count for Social Security purposes?

If you have less than 10 years of railroad service, your railroad credits are transferred to Social Security. In some survivor cases, your credits may be transferred if you have more than 10 years of railroad service. If you are insured based on combined earnings, your benefits are paid under the Social Security program.

1309. Do commissions count as wages?

Your commissions paid on sales are considered wages. The commissions are credited to your earnings record in the calendar year that they are paid. If you receive an advance against commissions you will earn in the future, the advance is considered wages when you receive the advance.

1310. Renewal commissions of life insurance salespersons.

1310.1. Do life insurance renewal commissions count as wages?

Your renewal commission as a life insurance salesperson is wages when paid if, at the time the policy was written, you are:

- A. An employee under the common-law test (see §802); or
- B. A full-time life insurance salesperson. (See §828.)

1310.2. Does employment status matter?

It does not matter whether you are an employee or self-employed at the time of payment. It also does not matter if you are required to perform any services in connection with the sale of the policy. Your status at the time the original sale was made determines if renewal commissions are wages, even if you are retired or have ended the employment relationship. Generally, renewal commissions are considered earned at the same time the original commission was earned if you were an employee at the time the policy was written.

1311. Do payments from a plan or system for sickness, retirement, etc. count as wages?

Payments you receive from a plan or system established by your employer for insurance or annuities are not wages. The plan must generally provide for all employees and/or their dependents or for a class(es) of employees and their dependents. The terms and conditions of the plan must be communicated to all employees or the class(es) affected. In addition, the plan must provide payment eligibility standards that include:

- A. Length of service, salary, classification, or occupation;
- B. The minimum period payments are made; and
- C. A formula for computing the minimum benefit for each eligible employee.

1312. Does sick pay count as wages?

Payments you receive for sickness and accident disability count as wages for the first six calendar months after the last month you worked. (For payments made by an employer to a disabled former employee, see §1335.)

1313. Do payments to a profit-sharing or stock bonus plan count as wages?

Effective January 1, 1984, payments your employer makes to a profit-sharing or stock bonus plan are wages if:

- A. You have the choice of receiving cash instead;
- B. The payments and the amounts are not included in your gross income because of section 402(a)(8) of the IRC; and
- C. One of the following conditions exists:
 - 1. The payments are made under a qualified cash or deferred arrangement; or
 - 2. The payments are made under section 401(k)(2) of the IRC.

The payments are counted as wages at the time the distributions are paid to the trust.

1314. Do payments from or to a tax-exempt trust fund count as wages?

Payments made from or to a tax-exempt trust fund on behalf of you or your beneficiary are not wages if the payments that are made “from or to a trust” that does not pay income tax under sections 401 and 501(a) of the IRC.

1315. Do payments to a Federal Thrift Savings Plan count as wages?

A Federal Thrift savings fund is treated as a trust in section 401(a) of the IRC. Therefore, **employer** contributions to your Thrift savings fund are not wages. However, your elective contributions to the fund are wages.

1316. Do payments from or to a tax-exempt annuity plan count as wages?

Payments made from or to an annuity or bond purchase plan on behalf of you or your beneficiary do not count as wages if at the time of payment:

- A. The annuity plan is qualified under section 403(a) of the IRC; or
- B. The bond purchase plan is qualified under section 405(a) of the IRC.

1317. Pension and retirement payments.

1317.1. Do pension and retirement payments count as wages?

Effective January 1, 1984, your pension and retirement payments generally count as wages. However, they do not count as wages if the payments are made from tax-exempt trusts or qualified deferred compensation plans.

1317.2. Do retirement payments based on a disability count as wages?

If you receive retirement payments because of a disability, the payments are not wages if they are made under the following conditions:

- A. They are made under your employer's plan;
- B. They are made when or after your employment ends; and
- C. Your retirement due to your disability was a condition or plan for the payment.

1318. Do amounts deferred under a nonqualified deferred compensation plan count as wages?

Effective January 1, 1984, delayed payments under your Nonqualified Deferred Compensation Plan are wages:

- A. When you perform services; or
- B. When you meet the conditions required for payment.

Note: If an agreement was in existence on March 24, 1983, between you and a nonqualified deferred compensation plan for services you performed before 1984, the payments are excluded from wages if the payment would have been excluded from wages under Social Security before 1983.

1319. Do supplemental retirement plan payments count as wages?

Effective January 1, 1984, your supplemental retirement plan payments do not count as wages if the payments are made under a plan that:

- A. Provides cost-of-living adjustments to pension benefits; and
- B. Is treated as a welfare plan under section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1984.

1320. Do advance payments count as wages?

Advance payments by your employer for work done in the future count as wages if:

- A. You do the work (or part of it); and
- B. Your employer considers the work as satisfaction for the advance payments.

1321. Do loans count as wages?

Loans from your employer to you do not count as wages, unless you pay the debt by work.

1322. Do bonuses and wage dividends count as wages?

Bonuses and wage dividends count as wages if they are payment for services you perform for your employer.

1323. Back pay.

1323.1. What is “back pay”?

“Back pay” is pay you receive in one period for actual employment in an earlier period. Back pay under statute is payment that is required by law, such as the National Labor Relations Act, the Fair Labor Standards Act, and other Federal and State laws. The purpose of back pay is to create an employment relationship or to protect employees' rights to wages.

1323.2. Do back pay count as wages?

Back pay, except penalties, interest, or legal expenses paid under a statute, is wages if it is paid for covered employment. For Social Security purposes, back pay may be assigned to the periods in which it should have been paid.

Back pay not under a statute is wages if it is extra pay for past employment. Back pay not under a statute is not assigned to any period other than the period in which it is paid.

1324. Do dismissal payments count as wages?

Dismissal payments from your employer to you when your services end count as wages.

1325. Do strike benefits count as wages?

If you are on strike, strike benefits paid by your union generally do not count as wages. It does not matter whether or not you are on picket duty during the strike or are subject to call.

Note: If payments other than strike benefits are made to you and you actually perform picket or other strike duties, the payments count for Social Security if they amount to \$100 or more in any calendar year.

1326. Does idle time pay count as wages?

Idle time pay counts as wages if:

- A. You are a non-striking employee; and
- B. Your employer pays you for the time you are idle because of a strike.

1327. Does vacation pay count as wages?

Vacation pay and pay you receive instead of taking a vacation count as wages. It does not matter whether you are paid for a period that you did not work. It also does not matter if the payment is for additional compensation for vacation time you did not use.

1328. Does veterans training pay count as wages?

Veterans training pay from the Department of Veterans Affairs does not count as wages. Subsistence or dependency allowances paid by the Department of Veterans Affairs to you as a veteran while you are attending school or participating in on-the-job training do not count as wages. Such payments are not for employment.

Any additional payments made by your employer do count as wages if they are paid for employment covered by Social Security.

1329. Tips.

1329.1. Do cash tips count as wages?

Cash tips you receive in the course of employment by any one employer are wages if the tips total \$20 or more in a calendar month. This includes tips you receive:

- A. Directly from customers;
- B. From charge customers that are paid by your employer to you; and
- C. Under a tip-splitting arrangement.

1329.2. Do non-cash tips count as wages?

Non-cash tips, such as passes, tickets, or services, do not count as wages.

Note: A club, hotel, or restaurant may require customers who use its dining or banquet rooms to pay a service charge, that is given to the employees. The employee's share of this service charge is not a tip. It is part of wages paid to the employee by the employer.

(For special rules concerning employee tip reporting to employers and payment of FICA tax on tips, see §1408.)

1330. Do prizes and awards from persons other than your employer count as wages?

Prizes and awards you receive from persons other than your employer generally do not count as wages. An example would be a prize or award

given by a manufacturer to a salesperson that handles the manufacturer's product, but works for an employer.

1331. Do taxes withheld from pay count as wages?

Taxes paid from your employer's funds or withheld from your pay count as wages.

Any Social Security taxes your employer pays from his/her own funds on wages for agricultural labor or domestic service you perform in his/her private home do not count as wages.

1332. Do traveling and business expense payments count as wages?

Travel and business expense payments you receive as reimbursement for business expenses you incur as part of furthering your employer's business count as wages if:

- A. Your employer does not require you to verify the expenses; or
- B. You can keep any amount in excess of the verifiable expenses.

Expenditures for your personal use are not business expenses.

1333. Do moving expense payments count as wages?

Payments you receive as reimbursement or allowance for moving expenses do not count as wages. It must be reasonable to believe that you could deduct the amount paid for income tax purposes under section 217 of the IRC.

1334. Do wages paid after the worker's death count as wages?

Wages earned before death and paid to a survivor or the employee's estate after death count as wages if they are paid **in the calendar year** the worker died.

If the wages are paid **after the calendar year** that the worker died, they do not count as wages. In addition, they are not subject to FICA contributions.

1335. Do payments made to a disabled former employee count as wages?

If you are a disability beneficiary, payments you receive from your employer after 1972 are not wages if:

- A. You became entitled to disability insurance benefits before the year in which the payment is made; and
- B. You did not work for your employer during the pay period in which the payment is made.

1336. Are interns in the U.S. during World War II granted wage credits?

You are granted wage credits if you were interned at a camp in the U.S. during World War II, if you are of Japanese ancestry. Wage credits are granted for each week that you were 18 or older. The credit for each of these weeks is the greater of:

- A. The highest hourly rate of pay for which you previously worked in any employment multiplied by 40; or
- B. The Federal minimum hourly rate in effect during that time. The minimum wage rate during 1941-1944 was 30 cents per hour, and during 1945-1946, 40 cents per hour. If you were not employed or were self-employed before internment, the amount of wages credited are based on the Federal minimum hourly rate in effect for that period.

Note: You will not receive these credits if a larger benefit would be payable without them; or if you are receiving a monthly benefit from another Federal agency based on the same internment.

1337. Does group-term life insurance count as wages?

The employer's cost (premiums) for group-term life insurance that exceeds the cost of \$50,000 is considered wages for Social Security purposes beginning January 1, 1988.

1338. Do payments from Individual Retirement Accounts (IRA's) and Keogh plans count as wages?

Payments from your Individual Retirement Account (IRA) are not considered "earnings." Likewise, if you are self-employed, payments from your Keogh Plan are not considered earnings. These payments are counted when they are deferred, not when they are distributed.

1339. Do payments provided by an employer for dependent care assistance count as wages?

Payments provided by your employer for dependent care assistance under a written program are not wages (provided the program qualifies under section 129 of the IRC).

1340. Do payments under or to a tax-sheltered annuity plan count as wages?

Tax-sheltered annuity payments do not count as wages if:

- A. The payments are made under a plan that meets the requirements of section 403(b) of the IRC for income tax deferral; and

B. You do not make the payments under a salary reduction agreement.

1341. Payments under a cafeteria plan.

1341.1. What is a “cafeteria plan”?

A “cafeteria plan”, under IRC section 125, is a written plan under which all participants are employees. The participants may choose among two or more employer-provided benefits consisting of cash and qualified benefits.

1341.2. Do cafeteria plan payments count as wages?

Whenever you select cash instead of a qualified benefit, these payments count as wages.

1342. Do fringe benefits count as wages?

Any fringe benefit that is not specifically exempt from Social Security taxes counts as wages. The amount of wages is the difference between the discount price you pay for the benefit and its fair market value.

Effective January 1, 1985, the following five categories of fringe benefits do not count as wages:

- A. The minimum fringe (a property or service furnished by your employer that is so small in value that counting it would be impractical);
- B. Gyms and other athletic facilities (the value of an employer-provided on-premises athletic facility);
- C. No additional cost service (any service provided to you by your employer for your use);
- D. Qualified employee discount (employee discount with respect to property or services); and
- E. Working condition fringe (any service or property provided by your employer, such as a parking space).

1343. Do meals and lodging count as wages?

The value of meals and lodging provided at work by your employer for your convenience does not count as wages (to the extent it is excluded under IRC section 119).

1344. Do payments that are not intended as remuneration for employment count as wages?

Payments you receive that are not meant to be payment for employment do not count as wages. Such payments include damages, attorney's fees, interest, or penalties paid under court judgment or by compromise settlement with your employer based on a wage claim.

CHAPTER 14

EARNINGS RECORDS AND TAX REPORTS

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1400. Earnings as basis for benefits.

1400.1. What is the basis for Social Security benefit amounts?

Social Security benefits are based upon your earnings as reported to the Social Security Administration (SSA). For this reason, it is important that you report these earnings to us promptly and accurately. (See §§1402-1404.)

1400.2. What types of benefits are determined by earnings?

Your earnings are used to find out whether you are entitled to retirement, survivors, disability, and health insurance benefits (see Chapter 2). Also, they are used to calculate cash benefit rates (see Chapter 7).

1401. Social Security Numbers.

1401.1. When is a Social Security Number issued?

A Social Security Number (SSN) is issued after we receive and process your completed application (Form SS-5, *Application for a Social Security Card*).

1401.2. What information do you submit with the application?

You must submit documents that prove your age, identity, and U.S. citizenship or legal alien status before we can process your application. If you are over age 18, you must apply in person for a Social Security card.

1401.3. How long does it take to process the application?

It takes about two weeks. Therefore you should file the application at least two weeks before you will need the number.

1401.4. What is the SSN used for?

The SSN is used for the following purposes:

- A. The SSN is used to record earnings covered by Social Security and/or Medicare. These earnings determine your Social Security benefits when you retire;
- B. Even if your work is not covered by Social Security, you need an SSN to report income to the Internal Revenue Service (IRS). The IRS uses the number as your taxpayer identification number for processing tax returns;

- C. Any person who is claimed as a dependent on someone's Federal tax return must have an SSN;
- D. You may need an SSN on applications filed for Social Security or supplemental security income benefits, and hospital or medical insurance coverage; and
- E. State-run programs may require an SSN for administrative purposes such as State tax programs, driver's license, motor vehicle registration, and public assistance.

1401.5. How does the SSN provide accurate identification?

Many people have the same name, but each person should have a unique SSN. Your SSN identifies you and allows earnings to be credited to you.

1401.6. Can a person use someone else's SSN?

No one else may use your SSN.

1401.7. Can a person have more than one SSN?

You must not have or use more than one SSN. Using more than one number might result in your earnings not being credited properly, and you could lose some rights to benefits. If you have more than one number, you should go to the nearest Social Security office so your earnings records can be cross-referred and properly credited.

1402. What precautions should be taken when using SSN's?

Careful use of SSN's helps ensure that your earnings are properly credited. The following steps should be taken:

- A. Employers should ask each employee to provide the name and SSN as it appears on the Social Security card;
- B. Employers should be careful to correctly record each employee's number; and
- C. If you are self-employed, you should accurately record your SSN on your Federal tax reports and returns.

1403. Earnings record.

1403.1. What does the earnings record show?

Your earnings record shows the amount of earnings reported by your employer or by you, if you are self-employed. Also, it shows the periods for which your earnings were reported.

1403.2. What happens to the Social Security taxes?

During working years, employees, their employers, and the self-employed pay Social Security and/or Medicare taxes. The equivalent of

these taxes is pooled in special trust funds under automatic appropriation by Congress. (See §140.)

1404. Earnings reports filed by employers.

1404.1. When must employers file reports of earnings?

Reports of earnings must be filed annually with us by every employer who:

- A. Is required to withhold income tax from wages; and/or
- B. Is liable for Federal Insurance Contributions Act (FICA) taxes, also called Social Security and Medicare taxes.

1404.2. How do employers file W-2 forms?

The method of filing depends on how many forms will be filed:

- A. Employers who expect to file 250 or more Forms W-2 (*Wage and Tax Statement*) must use magnetic media to report this information to us;
- B. All other employers may use Copy A of the Form W-2 to report the wage and tax information for their employees. We record the employee's Social Security earnings on the earnings record and forward the data to IRS.

1404.3. What other forms must employers file?

Employers must also file the following forms:

- A. Employers who are required to withhold income tax, FICA tax, or both, must file Forms 941 quarterly with IRS; and
- B. Employers of agricultural employees must file annual returns with IRS on Form 943 by January 31 of the year following the reporting year.

Both of these reports must be sent with the appropriate tax payments to IRS. These reports contain only summary information. To get more detailed information on employer reports and payment of taxes, contact any IRS office.

1404.4. What records of identification numbers must employers keep?

Each employer must keep the following records:

- A. The name and Social Security number of each employee as it is shown on the employee's Social Security card (this information is needed for the earnings report); and
- B. An employer identification number obtained from IRS by filing an *Application for Employer Identification Number* (Form SS-4). The application may be obtained from any IRS or Social Security office.

The employer identification number must be shown on the employer's tax returns and earnings reports.

1404.5. What should an employer do if an employee does not have a Social Security card?

If an employee does not have a Social Security card, the employer advises the employee to:

- A. Obtain an application Form SS-5, complete it, and send or take it to the nearest Social Security office along with the evidence required (See §1401);
- B. Apply in person if the employee is 18 years or older; and
- C. Provide the employer with the name and SSN exactly as it appears on the Social Security card.

The employer makes a record of the number as soon as it is received from the employee.

1404.6. What is an "employer"?

An employer is any person or organization for whom a person performs any service as an employee.

1404.7. What payments are counted as wages?

Pay for covered employment counts as wages (unless excluded by the Social Security Act).

1404.8. If a worker receives payment after he or she stops working for the employer, is the payment counted as wages?

Yes. Even if the relationship of employer-employee no longer exists when the payment is made, the payment is still counted as wages.

1405. Social Security and Medicare tax rates.

1405.1. What rates do employers and employees pay on Social Security and Medicare taxes?

Employers and employees pay Social Security and Medicare taxes at the same rate on wages up to the maximum amounts creditable for each program for the year. (See §1301.)

1405.2. Are tips included in determining wages?

Yes. Tips are included in determining the maximum wages on which the employer's tax is payable. (See §1329.) See §1408 for allocated tips.

1405.3. How is the tax rate calculated?

The Social Security tax rate is the sum of the retirement, survivors, and disability insurance tax rate and the hospital insurance tax rate on the wages. The following chart shows the rates that apply to both employers and employees:

Tax Rate

Calendar year	Retirement, survivors, and disability insurance rate	Hospital insurance rate	Combined rate
1985	5.70%	1.35%	7.05%
1986-1987	5.70%	1.45%	7.15%
1988-1989	6.06%	1.45%	7.51%
1990 and later	6.20%	1.45%	7.65%

1406. Employee tax deducted from pay.

1406.1. When are Social Security and Medicare taxes deducted from wages?

Social Security and Medicare taxes are deducted when wages are paid. (See §1408 for special rules on cash and charged tips).

1406.2. Are taxes deducted if your do not meet the minimum dollar test?

If an employer is not sure if an employee will meet the minimum dollar test for household employees (as explained in §915), for agricultural employees (as explained in §901), or for some homeworkers (as explained in §830), the employer may:

- A. Deduct the tax when the payment is made; or
- B. Wait until the test is met.

1406.3. How are taxes deducted for tips?

If the employee submits written reports of tips more than once a month (§1408), the employer may collect the Social Security tax on tips even if the cash-pay test in §1408 is not yet met.

1406.4. If the employee does not meet the cash-pay test, what should the employer do?

If the employer collects the taxes and later finds that the employee does not meet the test, the employer must repay the Social Security taxes deducted to the employee. If the employer cannot locate the employee, the taxes should be sent to IRS.

1407. Employees working for more than one employer.

1407.1. Why is too much tax sometimes withheld?

If you work for more than one employer, you may not have to pay all the taxes deducted by the employers. This is because the tax is deducted on wages paid by each employer up to the maximum wages creditable for Social Security. The total deducted may be more than you owe. (Beginning with tax year 1994, there is no limit on Medicare wages.)

1407.2. How is Social Security tax calculated if too much was withheld?

Claim the excess as a credit against your income tax when you file your Federal income tax return. Your credit is the total Social Security that was deducted from your wages that year minus the taxes actually due.

1408. Special rules for cash tips after 1965.

1408.1. When are tips counted as wages?

Tips that total more than \$20 for one month are considered wages.

1408.2. When are tips considered received?

Tips are considered received when you report them to your employer. If you fail to report the tips to your employer, the tips are treated as received when you actually received them.

1408.3. How are tips reported?

For each month that you receive \$20 or more in tips, you must give your employer a written statement of cash and charge tips by the 10th day of the month after the month that you received the tips. Use IRS Form 4070 (*Employee's Report of Tips to Employer*) to report tips.

1408.4. Are tips of less than \$20 per month reported?

No. Tips totaling less than \$20 during a single calendar month while working for any one employer are not wages for FICA tax purposes. You do not need to report them to your employer.

1408.5. Are taxes withheld on tips?

Your employer must withhold Social Security, Medicare, and income taxes due on the tips you report. Your employer withholds FICA taxes due on tips from the employee's wages and pays both employer and employee portions of the tax in the same manner as the tax on your regular wages.

1408.6. What tax information is available for employers?

Employers should obtain IRS Circular E (*Employer's Tax Guide*) for information regarding employer's tax responsibilities.

1408.7. When is tip income allocated in food and beverage establishments?

Food or beverage establishments with 10 or more employees must allocate tip income to employees if the total amount of tips reported by all tipped employees is less than eight percent of total sales.

1408.8. How much tip income is allocated?

The amount allocated is the difference between eight percent of total sales and the amount of tips reported.

1408.9. How is allocated tip income reported?

Allocated tip income is reported as follows:

- A. Employers are required to report tips allocated to employees on IRS Form W-2 (*Wage and Tax Statement*);
- B. The employer withholds no Social Security, Medicare, or income taxes on allocated tips from the employees;
- C. The employer is not liable for its portion of the FICA taxes on unreported tips until the IRS notifies the employer and demands payment; and
- D. As an employee, you pay the FICA tax due by completing IRS Form 4137 (*Social Security and Medicare Tax on Unreported Tip Income*) and filing it with IRS Form 1040 (*U.S. Individual Income Tax Return*).

1408.10. Do allocated tips count as wages?

For Social Security purposes, allocated tips do not count as wages or income unless you report the allocated tips as additional income on IRS Form 1040.

1408.11. Must employees report allocated tip income?

You must report the allocated tip income amount as additional income unless you have records to show that the allocated tip amount was not received.

1408.12. How does an employee pay FICA taxes on allocated tip income?

If you include allocated tip income on Form 1040, you pay your portion of the FICA taxes by completing IRS Form 4137. The IRS reports the additional income to us to credit your earnings record.

1408.13. Where can you find more information on income and employment taxes on tips?

For more information regarding income and employment taxes on tips, see IRS Publication 531 (*Reporting Income from Tips*).

1409. What tax return forms do employers use?

Tax return forms used by employers include:

- A. Form W-2 (*Wage and Tax Statement*);
- B. Form W-2c (*Corrected Wage and Tax Statement*);
- C. Form 941 (*Employer's Quarterly Federal Tax Return*);
- D. Schedule H (*Household Employment Taxes*); and
- E. Form 943 (*Employer's Annual Tax Return for Agricultural Employees*).

An employer who has household employees in addition to employees reported on Form 941 may report both classes of employees on Form 941.

Also employers use Form 941 to report income tax withheld. You can obtain all necessary forms from any IRS office.

1410. What are the due dates for filing returns and paying taxes?

Due dates for filing returns and paying the balance of taxes due depend upon the type and size of the employer. Refer to the IRS publications mentioned in the later sections for detailed filing instructions.

1411. Statements of earnings for employees.

1411.1. What items are shown on a statement of earnings?

Every employer subject to Social Security taxes must provide written statements of earnings to employees. Treasury Form W-2 (*Wage and Tax Statement*) is generally used for this purpose. The statement must show:

- A. The name, address, and identification number of the employer;
- B. The name, address, and Social Security number of the employee;
- C. The total amount of wages (including tips reported to the employer by the employee) subject to Social Security and Medicare taxes which were paid to the employee during the calendar year;
- D. The amount of the Social Security and Medicare taxes deducted from the employee's wages;
- E. The total amount of tips reported to the employer which is subject to Social Security and Medicare taxes; and
- F. The amount of the Social Security and Medicare taxes, if any, the employee still owes on tips reported to the employer.

1411.2. When are statements provided to employees?

These statements must be given to employees as follows:

- A. No later than January 31 following the calendar year in which the wages were paid; or
- B. An employee who stops working before the end of a year and does not expect to return to work that year may ask the employer for an earlier statement. The statement must be furnished by the latest of the following:
 - 1. 30 days after the date of the employee's request;
 - 2. 30 days after the last wages were paid; or
 - 3. 30 days after the death of the worker, in which case the statement is sent to the next of kin as well as to IRS.

1412. Records employers must keep.

1412.1. What information about employees must the employer keep?

Employers must keep the following records:

- A. Names, addresses, and occupations of employees receiving wages;
- B. Employees' periods of employment;
- C. Employees' Social Security numbers;
- D. The employer's identification number;
- E. Total amount and date of each wage payment (including tips reported to the employer by the employee);
- F. Amount of each wage payment subject to Social Security and Medicare taxes and the amount of tax withheld; and
- G. Farm operators who utilize services of "crew leaders" must keep a record showing the name, home address, and employer's identification number of the crew leader.

1412.2. What copies of these records are kept?

The employer (except a household employer) must keep duplicate copies of the quarterly and annual returns on which employees' wages are reported for Social Security purposes.

1412.3. How long must the records be kept?

These records must be kept for a period of at least four years after the date the tax is due or is paid whichever is later.

1413. What Internal Revenue Service publications provide information on employer tax payments?

For more detailed information concerning employer deduction and payment of Social Security and Medicare taxes, employers can obtain the following publications from any IRS office:

- A. General employment:

1. Publication 15, Circular E, *Employer's Tax Guide*;
2. Publication 15A, *Employee's Supplemental Tax Guide*;
3. Publication 80, Circular SS, *Federal Tax Guide for Employers in the Virgin Islands, Guam, and American Samoa*;
4. Publication 179, Circular PR, *Guia contributiva federal; para patronos puertorriqueños (Federal Tax Guide for Employers in Puerto Rico)*;
5. Publication 539, *Withholding Taxes and Reporting Requirements*; and
6. Publication 957, *Reporting Back Pay and Special Wage Payments to the Social Security Administration*.

B. Agricultural employment:

Circular A, *Agricultural Employer's Tax Guide*.

1414. Self-employment tax.

1414.1. When do self-employed people pay self-employment tax?

If you are self-employed, you must pay the self-employment tax quarterly to IRS. You must pay any balance due when you file your Federal income tax returns on or before the 15th day of the fourth month following the end of your taxable year. (If you have a calendar tax year, this means on or before April 15th.)

1414.2. How does SSA obtain a record of earnings?

IRS reports the earnings to us for posting to the earnings record.

1414.3. Where can you obtain additional information on net earnings from self-employment?

For details about figuring net earnings from self-employment, including the optional ways of figuring net earnings which self-employed persons can use, see Chapter 12.

1415. Social Security taxes on self-employment income.

1415.1. What are the tax rates on self-employment income?

Social Security taxes are paid on self-employment income up to the maximum amount creditable for the year. Medicare taxes are paid on all self-employment income, as there is no yearly maximum. (See §1201.) The Social Security and Medicare tax rates on self-employment income are shown in the following chart:

Social Security and Medicare Tax Rates (Self-Employment)

Taxable year	Retirement, survivors, and disability insurance rate	Hospital insurance rate	Combined rate
1985	11.40%	2.70%	14.10%
1986-1987	11.40%	2.90%	14.30%
1988-1989	12.12%	2.90%	15.02%
1990 and later	12.40%	2.90%	15.30%

1415.2. What tax credits are allowed for self-employed persons?

If you were self-employed in 1984-1989, you were allowed credit against your Social Security and Medicare tax liability for those years in the following percentages:

Self-Employed Tax Credits

Taxable Year	Percentage Rate
1984	2.7%
1985	2.3%
1986-1989	2.0%

After 1989, the credit was replaced with special deduction provisions designed to treat the self-employed like employees and employers are treated for Social Security and income tax purposes.

1416. What are the reporting requirements for self-employed people?

If you are self-employed and have net earnings of \$400 or more in any taxable year, you must:

- A. Complete Form 1040 (*U.S. Individual Income Tax Return*) including Schedule C (Farmers use Schedule F instead of Schedule C);
- B. Complete Schedule SE (*Computation of Social Security Self-Employment Tax*); and

C. Send the return and schedules to IRS with the balance of any self-employment tax that is due.

1417. What forms are filed for partnerships?

A partnership is required to file Form 1065 (*Partnership Return of Income*) to show each partner's share of partnership's income or loss. If you are a partner in a business, you should include your share of the partnership net earnings (or loss) from self-employment on your individual tax return.

1418. What IRS publications provide information on self-employment tax payments?

For more detailed information on self-employment tax payments, refer to the following publications:

A. General self-employment

1. Publication 17, *Your Federal Tax*;
2. Publication 334, *Tax Guide for Small Business*;
3. Publication 533, *Self-Employment Tax*; and
4. Publication 553, *Information on Self-Employment Tax*.

B. Farm self-employment

1. Publication 225, *Farmer's Tax Guide*.

C. Foreign self-employment

1. Publication 54, *Tax Guide for U.S. Citizens Abroad*.

D. Commercial fishermen

1. Publication 595, *Tax Guide for Commercial Fishermen*.

You can obtain these publications from any IRS office.

1419. Earnings information available from Social Security records.

Each year, Social Security automatically mails a Social Security Statement to everyone who is at least 25 years of age, not already receiving Social Security benefits based on their own earnings record and for whom we can obtain a current address. These statements are mailed about three months before the person's birthday.

1419.1. How can you obtain a statement of earnings?

You also can get a statement of earnings on your Social Security record free of charge by completing Form SSA-7004 (*Request for Social Security Statement*). You can obtain this request form at any Social Security office or by calling SSA's toll free number, 1-800-772-1213 or from www.ssa.gov/mystatement on the Internet.

1419.2. Who is allowed to complete the form?

The form must be completed by the person to whom the record pertains or by an authorized representative.

1419.3. What information is shown on the statement?

Earnings statements show:

- A. Total earnings credited to your record beginning January 1, 1937, through December 31, 1950;
- B. The annual totals of earnings for the years 1951 through two years before the current year;
- C. The number of credits you need for insured status (see Chapter 2);
- D. The number of credits you have earned; and
- E. Estimates for retirement, disability, family and survivors benefits.

1419.4. How can you obtain more detailed information on coverage?

You may complete Form SSA-7050-F3 (*Request for Social Security Earnings Information*) to obtain more detailed earnings information than that shown on the Form SSA-7005.

1419.5. Is there a cost to obtain the information?

No, if you need the information in connection with Social Security. For example, you may need earnings information to verify an employer's earnings report or to compute your amount of Social Security taxes.

Yes, charges are made if more detailed earnings information than that shown on the SSA-7005 is required for other than Social Security purposes. Charges are also made if certification by the custodian of the record is needed. Examples would be for the requestor's use in planning private pensions or civil litigation.

1419.6. How are charges calculated?

Charges are determined according to the fee provisions of section 1106(c) of the Social Security Act.

1420. Procedure for correcting earnings record.

1420.1. What is the process for correcting earnings records, and when should it be done?

To correct your Social Security Earnings record, get in touch with the nearest Social Security office or call SSA's toll free number 1-800-772-1213. Do this when your earnings statement shows that earnings have not been correctly reported or credited. It will be helpful when you contact SSA to have any information such as forms W-2, paystubs, etc. available.

1420.2. How does the SSA assist employees with correcting their record?

We do several things to help correct your record. We check to see if any missing reports of earnings can be found. If we can not find the records, we write your employer to get a statement of your earnings.

1421. Evidence needed to change earnings record.

1421.1. Can your earnings record be corrected?

Your earnings record can be corrected (subject to the requirements in §§1424-1425 if the time limit has passed) if there is acceptable evidence of wages paid to you.

1421.2. What evidence is acceptable?

The evidence may be a statement signed by your employer, Form W-2 (*Wage and Tax Statement*), pay envelopes or pay slips, or personal records of your wages. (See §§1726-1733 for a discussion of how to establish wages.)

1421.3. How can self-employed people establish earnings?

If you are self-employed, you may establish earnings by submitting a copy of your tax return. Include the applicable schedules (see §1416) and evidence that your return was filed timely with IRS in a timely manner. Evidence of filing your return includes canceled checks, IRS receipts, or other evidence of payment of tax shown on your return.

1421.4. How can partnerships establish earnings?

If a partnership is involved, a copy of Form 1065 should also be furnished.

1422. How are wage disputes between employer and employee resolved?

If you and your employer disagree about the amount of wages paid, when they were paid, or whether your work was covered by Social Security, we help you obtain evidence to settle the matter. We will then make a decision as to:

- A. Whether your earnings can be credited;
- B. The amount of your earnings; and
- C. The period to which they should be credited.

You are notified of the decision and the correction, if any, made to your earnings record.

1423. Time limit for correcting earnings records.

1423.1. What is the time limit for correcting earnings?

An earnings record can be corrected at any time up to three years, three months, and 15 days after the year in which the wages were paid or the self-employment income was derived. If the last day of that period falls on a Saturday, Sunday, legal holiday, or other non-work day for Federal employees set by statute or Executive Order, the period for correction is extended to the end of the next work day.

1423.2. How can earnings be corrected after the time limit is passed?

After the time limit has passed, the earnings record can be corrected only as explained below in §§1424-1425. "Year" means "calendar year" for wages and "taxable year" for self-employment income.

The following chart illustrates how the time limit operates:

Time Limit for Correcting Earnings

If you were paid wages or you derived self-employment income in...	Then the Period of correction is...	And the record of wages or self-employment income is final on...
Calendar year 1987	1/1/88 through 4/15/91	4/16/91.
Taxable year ending 6/30/85	7/1/85 through 10/17/88 (October 15th falls on a Saturday)	10/18/88.
Taxable year ending 9/30/85	10/1/85 through 1/16/89 (January 15th falls on a Sunday)	1/17/89.

1424. When can earnings records be revised after the time limit?

After the time limit has passed, earnings records can only be revised under the conditions described below and in §1425:

- A. To correct an entry established through fraud;
- B. To correct a mechanical, clerical, or other obvious error;
- C. To correct errors in crediting earnings to the wrong person or to the wrong period;

- D. To transfer items to or from the Railroad Retirement Board (if reported to the wrong agency), or to add railroad earnings to Social Security earnings when the law permits;
- E. To add wages paid in a period by an employer who made no report of any wages paid to the worker in that period, or if the employer is increasing the originally reported amount for the period;
- F. To add or remove wages in accordance with a wage report filed by the employer with IRS; or, if a State or local governmental employer, with SSA if the report is filed within the time limitation specified for assessment, refund, or credit under a State's coverage agreement;
- G. To add self-employment income in a taxable year if an individual or the individual's survivor establishes that:
 - 1. A self-employment tax return for that year was filed before the time limit ran out; and
 - 2. Either no self-employment income for that year has been recorded in the individual's earnings record, or the recorded self-employment income for that year is less than the amount reported on the self-employment tax return; or
- H. To add self-employment income for any taxable year up to the amount of earnings that were wrongly recorded as wages and later deleted. This can be done only if a tax return reporting such self-employment income is filed within three years, three months, and 15 days after the taxable year in which the earnings wrongly recorded as wages were deleted. The self-employment income must:
 - 1. Be for the same taxable year as the year in which the wages were removed; and
 - 2. Have already been included on the individual's Social Security record.

1425. Time limit extended if an investigation is in progress.

1425.1. Can revisions be made after the time limit has run out?

The earnings record for a year may be revised even after the time limit for that year has run out if, before it ran out, the worker or the worker's survivor:

- A. Applied for benefits; or
- B. Requested a revision of his or her earnings record for that year.

1425.2. When can the earnings record be corrected?

That part of the earnings record open to correction at the time of filing the application may be corrected up until a final decision is made on the earnings issue.

1425.3. Can the earnings record be revised after a final decision?

No, after a final decision has been made on the earnings issue, you may not revise your earnings record for that year.

1425.4. What years can be corrected?

The only years open to correction are:

- A. Those years for which revision has specifically been requested before the time limit ran out; and
- B. Those years in which the time limits ran out before the date of the final decision.

1425.5. What is the definition of “survivor”?

“Survivor” in this section means the worker's widow (including a surviving divorced wife or surviving divorced mother), widower (including a surviving divorced husband or surviving divorced father), child, or parent.

1426. Time limit suspended during military service.

1426.1. Can the time limit be suspended for service personnel?

The time limit for making corrections is suspended while you are in the active military service. The suspension period can begin no earlier than October 17, 1940, and ends with the earliest of the following:

- A. The date of your discharge from active service;
- B. The date of your death; or
- C. The date the Soldiers' and Sailors' Civil Relief Act of 1940 is no longer in force.

1426.2. Does the suspension apply to military service of heirs?

The time limit is also suspended during the military service of an heir of the worker. Heirs include spouse, child, and parent. Thus, if a worker's spouse was in the military service when the worker died, the time limitation is extended by the time between the worker's death and the date of the widow(er)'s discharge from service.

1427. Is notice given of changes in an earnings record?

No. Notice of changes in an earnings record are not given unless:

A. The worker or the worker's survivor was previously given a report of the worker's wages for periods in which a deletion or reduction of wages is made; or

B. Amounts recorded as self-employment income are being reduced.

Note: A survivor is given notice of a change only if the worker or the survivor was previously given a report of wages or self-employment income for the period involved.

CHAPTER 15

FILING A CLAIM

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1500. Filing of applications-general.

1500.1. Why do you need to file an application for benefits?

You must file an application to:

- A. Become entitled to benefits, including Medicare;
- B. Establish a period of disability under the retirement, survivors, and disability insurance programs; or
- C. Become eligible for Supplemental Security Income (SSI) payments.

1500.2. How do you apply for benefits?

Fill out the application on a form issued by the Social Security Administration (SSA). (See §1511.) Also, as applications for Social Security benefits become available to you on our Internet website, you may be able to apply for Social Security benefits online. File the completed and signed application form at a Social Security office or with a person authorized by us to receive applications. (See §§1505, 1506, 1511, and 1512.) Once you file the form, it becomes our property, and it will not be returned to you.

1500.3. Do you have to file an application for hospital and supplementary medical insurance if you are 65 or older?

If you are age 65 or older and entitled to monthly benefits under Social Security or railroad retirement, you are automatically entitled to hospital insurance and supplementary medical insurance. You do not need to file a separate application for these benefits. If you are eligible for monthly benefits and are age 65 or older, you may apply for hospital insurance (Medicare, Part A) and medical insurance (Medicare, Part B) without applying for monthly benefits.

If you are age 65 or older and not entitled to monthly benefits under Social Security or railroad retirement, you need to file an application for hospital and supplementary medical insurance. You must be willing to pay the monthly premiums involved. (See Chapter 24.)

1500.4. Where can you find additional information about hospital and medical insurance benefits?

Chapter 24 includes information concerning entitlement to hospital and medical insurance (Medicare) for persons entitled to disability benefits and persons with end-stage renal disease requiring renal dialysis or kidney transplant.

1501. Who signs applications.

1501.1. Who normally signs the application form for Social Security benefits?

We normally expect the claimant to sign the application personally if he or she is:

- A. At least age 18;
- B. Mentally competent; and
- C. Physically able to do so.

Where good cause is shown, an application may be signed by someone else, e.g., where a loss of benefits might result from the delay in obtaining an application. (See Chapter 16.)

1501.2. Who signs the application if the claimant can not?

If the claimant does not meet the conditions above, the application ordinarily is signed by the legal guardian, committee, or other legal representative of the claimant. It may also be signed by the relative or other person who cares for the claimant. If the claimant is in the care of an institution, the manager or principal officer of the institution may sign the application for the claimant.

1502. When to file effective applications.

1502.1. When should you file an application for benefits?

File your application for monthly retirement, survivors, or disability insurance benefits before the first month you are entitled to benefits. If you file your application in this time frame, the application becomes effective once you become eligible for the benefit.

1502.2. When should you file an application for the establishment of a period of disability?

If you are applying for the establishment of a period of disability, you may file your application before the first day this period begins. Your application becomes effective some time before we make a final decision on your application.

1503. Individuals near retirement age.

1503.1. Why should you contact us before you turn 62?

If you are a worker, you may get in touch with a Social Security office up to four months before you turn 62. We will give you the information you need so you can decide whether or not to file an application for reduced retirement benefits at that time.

1503.2. When should you contact us if you do not file an application for reduced retirement benefits at 62?

If you do not file an application for reduced retirement benefits at age 62, you should contact us again:

- A. Two or three months before you retire;
- B. As soon as you know that you will neither earn more than the monthly exempt amount (see §1807.5) in wages nor render substantial services in self-employment in one or more months of the year, **regardless of expected total annual earnings** (see Chapter 18 for the earnings test); or
- C. Two or three months before you reach Full Retirement Age (FRA), even if you are still working.

1504. Result of delay in filing for benefits.

1504.1. What are the advantages of filing an application on time?

It generally works to your advantage to file your application for benefits promptly, even if you are still working. Any delay in filing your application may result:

- A. In fewer payments, since:
 - 1. Monthly benefits cannot be paid retroactively in some instances; and
 - 2. Benefits cannot be paid for more than 12 months (depending on the particulars of the situation) before the month you file the application. (See §1513.)
- B. In loss of some months of coverage under the hospital and medical insurance programs.

1504.2. When is it beneficial to delay the filing of your application?

It may be to your advantage to delay filing an application for monthly benefits if:

- A. You have not yet reached FRA and you wish to wait and receive an unreduced benefit at FRA; or
- B. You would lose benefits payable under some other program.

1505. Where applications may be filed.

1505.1. Where do you file your application for Social Security benefits?

File your application for Social Security benefits:

- A. At a Social Security office or with an authorized Social Security employee;
- B. At a U.S. Foreign Service post if you are not a resident of the U.S. or could lose benefits because of extended absence from the U.S. (in the Philippines, applications may be filed at the U.S. Veterans Affairs Regional Office in Manila);
- C. In certain cases, with the Railroad Retirement Board or the Department of Veterans Affairs (see §1506); or
- D. In certain cases, with a provider of hospital services that is participating in the Social Security hospital insurance program. This provision protects you if you are:
 - 1. Age 65 or older;
 - 2. Eligible for hospital insurance benefits; and
 - 3. Admitted to a hospital for inpatient services without ever having filed an application with us.

Note: There is no similar provision for medical insurance. These applications can only be filed at specific times. (See Chapter 24.)

1505.2. Where do you file your application for SSI benefits?

File your application for SSI benefits:

- A. At a Social Security office or with an authorized Social Security employee;
- B. By someone at another Federal or State office designated by us to receive applications, or
- C. By another person designated by us to receive applications.

1506. Application filed with Department of Veterans Affairs or Railroad Retirement Board.

1506.1. Are applications you file with the Department of Veterans Affairs or the Railroad Retirement Board considered applications for Social Security benefits?

In some instances, applications you file with the Department of Veterans Affairs or the Railroad Retirement Board for benefits payable under their programs may be considered applications for Social Security benefits. If so, the claim or notice of the claim is sent to SSA.

1506.2. What types of Social Security benefits are considered when you file an application with the Department of Veterans Affairs?

When you file an application with the Department of Veterans Affairs for survivor's dependency and indemnity compensation, your application may also be considered an application for the following Social Security benefits:

- A. Child's benefits;
- B. Surviving spouse's benefits; or
- C. Parent's monthly Social Security benefits.

Your application listed in (A) through (C) above is not considered an application for the lump-sum death payment.

1506.3. What types of Social Security benefits are considered when you file an application with the Railroad Retirement Board?

When you file an application with the Railroad Retirement Board for an annuity, your application is also considered an application for Social Security benefits (unless you specify otherwise). In the case of disability, your application is used to establish a period of disability under both the Railroad Retirement Act and the Social Security Act (unless you specify otherwise).

1507. When application is considered filed.

1507.1. When is your application for benefits generally considered filed?

We consider your application for benefits filed as of the day your application is received by:

- A. A Social Security office;
- B. Any other office we authorize to accept applications;
- C. A Social Security employee authorized to receive applications; or
- D. Any person designated by us to receive applications.

1507.2. Can a filing date other than the date of receipt be considered?

If we can establish an earlier filing date based on (A) - (E) below, we use that date as the application filing date instead of the receipt date:

- A. The U.S. postmark date on the envelope containing the protective writing or application, if that date is more favorable than the date of receipt by such office or employee. (Only a U.S. postmark is acceptable.);
- B. The date a written request for Social Security benefits is received;

- C. The date a systems record is made of a telephone contact requesting benefits, provided a valid application is received at a later date (see §1509);
- D. The date a written or verbal request for SSI benefits is received, provided a valid application is received at a later date per (B) above and use of this date results in eligibility for additional benefits; or
- E. For Social Security Benefits:
 - 1. The date a U.S. Foreign Service post (or in the U.S. Veterans Affairs Regional Office, Manila) receives an application; or
 - 2. The date a social security agency of a foreign country with which the U.S. has a social security agreement (see §107) receives a written request for benefits.

1508. What are the requirements for an application to be considered valid?

Your application for benefits, including SSI, must be:

- A. Made on a prescribed form;
- B. Signed by a proper person (see §1501);
- C. Received by one of the offices (or persons) specified in §§1505 and 1506; and
- D. Received while you (or the person eligible for benefits) are still living.

Note: This requirement does not apply to applications for Social Security Disability Insurance benefits where the deceased was disabled prior to death. An application for disability insurance benefits may be filed by a qualified individual (see §1902) within three months after the month of death of the disabled person.

(Where an individual dies after requesting benefits in writing, but before filing a prescribed form, see §1509.)

1509. Written statement considered as application.

1509.1. When is a written statement used as the application filing date?

The receipt date of any written statement requesting benefits (or a verbal inquiry about SSI Benefits) is used as the application filing date if the following requirements are met:

- A. The statement indicates an intention on the part of the writer to claim benefits, the lump-sum death payment, or to establish a period of disability. Intent to file is not required to establish an SSI verbal inquiry;

- B. The statement is signed by the claimant or someone on his/her behalf, the claimant's spouse, or some other person who is authorized to file the application (see §1501);
- C. The application is completed on a prescribed application form (see §1510) and is filed by the claimant (or a person who is authorized to file an application for the claimant). The valid application must be filed within six months for Social Security benefits (or within 60 days for SSI) after the date we notify the claimant that a formal application is necessary; and
- D. For Social Security Benefits, either:
 - 1. The claimant is alive when the valid application is filed; or
 - 2. If the claimant died before filing the valid application, the form is filed by a person acting on behalf of the claimant's estate or by a survivor eligible for benefits on his or her earnings record. The valid application must be filed within six months after our notice that a formal application is necessary.
- E. For SSI Benefits:
 - 1. The claimant is alive when the valid application is filed; or
 - 2. If the claimant died before filing the valid application, the form is filed by a surviving living-with spouse or, in the case of a child, the child's living-with parent. The valid application must be filed within 60 days after our notice that a formal application is necessary; or
 - 3. Use of the receipt date results in eligibility for additional benefits.

1509.2. How are benefit rights protected for military service members who are missing in action?

Form DD-1300 (*Report of Casualty*) is prepared by a military service department, indicating a service member is missing. It is a written intent to claim benefits on behalf of the service member and all other persons eligible for benefits under the service member's Social Security record. This procedure serves, if the need arises, to protect the benefit rights of service members (and their dependents) missing in action. If an application is filed, we use the date the Form DD-1300 is prepared as the application filing date.

1510. Can you file one application for more than one type of benefit?

Each application form is clearly worded to show its scope as an application for one or more types of benefits. For example, the present applications for entitlement to hospital insurance protection, or for

monthly benefits, may apply to all benefits that you may be entitled to on **any Social Security earnings record**. You can expand or restrict the scope of your application as long as you add appropriate remarks, in writing, on the application before we make a decision on your claim.

This rule has some exceptions. If you are eligible for both reduced retirement insurance benefits and reduced spouse's insurance benefits beginning with the same month, you cannot restrict an application to just one of these types of benefits. By filing for either benefit, you are deemed by law to have filed for both types of benefits. The Social Security office determines the proper application form to use when you file your claim.

1511. Completing the application form.

1511.1. Do you need to fill out all questions on the application form?

You should answer all questions on the application form. If you do not know the answer to a question, write "unknown". If you do not answer a question needed to establish your right to benefits, we cannot award benefits.

1511.2. How do you sign the application if you cannot write?

If you cannot write, signature by mark on the signature line is acceptable. The signature by mark must be witnessed as indicated on the application form.

1512. How can Social Security help you complete your application?

If you find that you need help completing your application, any Social Security office will provide assistance free of charge. If you cannot go to the Social Security office personally because of poor health, or if there is no Social Security office nearby, call or write the nearest Social Security office to:

- A. Get full information and application forms;
- B. Make an appointment for a telephone interview; or
- C. Request that someone from the Social Security office go to your home. (See §110.)

1513. Retroactive effect of application.

1513.1. Can you be entitled to benefits retroactively?

You may be entitled to monthly benefits retroactively for months before the month you filed an application for benefits. For example, retirement and survivor claims may be paid for up to six months

retroactively. In certain cases, benefits involving disability up to 12 months may be paid retroactively. (This is not true of the special age 72 payments (see §§346-348), black lung benefits (see Chapter 22), medical insurance (see Chapter 24), or SSI (see Chapter 21).)

1513.2. How is the retroactive entitlement date determined?

You are entitled to benefits beginning the first month in the retroactive period that you meet all requirements (except for the filing of an application) for entitlement. For example, suppose you reach FRA in March 1999 and you are fully insured. You do not file an application for retirement insurance benefits until March 2000. In this case, you may be entitled retroactively beginning with the month of September 1999.

1513.3. Are retroactive benefits payable if it results in a permanent reduction of the monthly benefit amount?

Retroactive benefits for months prior to attainment of FRA are not payable to a retired worker, spouse, or widow(er) if this results in a permanent reduction of the monthly benefit amount. However, this limitation does not apply if you are a surviving spouse or surviving divorced spouse under a disability, and you could be entitled to retroactive benefits for any month before you turn 60.

1513.4. Is a widow(er) or surviving divorced spouse entitled to benefits in the month of the worker's death?

If you are a widow(er) or surviving divorced spouse and you file an application in the month after the month of the worker's death, you may be entitled to benefits in the month of the worker's death. In order to be entitled in the month of the worker's death, you must be otherwise eligible in that month.

1513.5. Is a widow(er) or surviving divorced spouse entitled to retroactive hospital insurance benefits?

If you are a widow(er) or surviving divorced spouse applying for hospital insurance benefits because of a disability, you may be deemed entitled retroactively for up to 12 months, even if monthly benefits are not payable retroactively. You must meet all other conditions of entitlement.

1513.6. Can you be paid retroactively even if you are no longer eligible for monthly benefits?

Even if you file an application and are no longer eligible for monthly benefits, you may be paid benefits for the period beginning six months

(or 12 months in certain cases involving disability) before the month you file the application. Payment ends with the month before the month you are no longer eligible.

1513.7. Are benefits payable if a claimant dies before filing an application?

If a person requests benefits in a written statement (see §1509) but dies before filing the valid application, benefits may be payable for the months in the period before death. Benefits for the months before the claimant's death may also be paid to a survivor whose right to benefits depended upon the claimant's entitlement to benefits.

1514. Claimant may restrict retroactivity.

1514.1. Can you restrict your right to retroactive benefits?

Yes. You may restrict any retroactive right to benefits. Make your request in writing at any time before we make a decision on your application.

1514.2. Why might you want to restrict your right to retroactive benefits?

We do not use “waived” months in computing the reduction factor. (See §723.) This may result in a higher benefit amount for later months. You may want to give up benefits for certain months in order to receive somewhat higher benefits later on.

1514.3. What benefits may you NOT exclude from your application?

In some cases, you may be eligible for a reduced spouse's benefit or a reduced divorced spouse's benefit in the same month you become entitled to retirement insurance benefits (RIB) on your own record. In this instance, you are deemed to have filed for the reduced spouse's benefit. Law does not permit you to exclude these benefits from the scope of the RIB application.

The opposite of the above is also true. You may not exclude a reduced RIB from the scope of your application for reduced spouse's benefits if you are eligible for the RIB in the initial month of entitlement to reduced spouse's benefits.

1514.4. Can you change your decision to restrict retroactivity?

In certain cases, you may change your decision to restrict retroactivity. For example, if you discover that earnings in the year were more or less than you expected, you can change the effective month to any month within the retroactive period of the original application. However, any other beneficiary who would lose some or all of those

benefits because of such a change must agree to it in writing. Also, any benefits that were paid based on entitlement cancelled by the change must be repaid.

1515. Right to withdraw application.

1515.1. Can you withdraw your application?

Yes. You may withdraw your application if:

- A. You (or a person acting on your behalf) files a written request for withdrawal before we make a decision on your application; and
- B. You are alive at the time the request is filed.

If we approve your request to withdraw an application, the application will be considered as if it was never filed. If we deny your request for withdrawal, the application is treated as if the request for withdrawal was never filed.

Note: There is no right to reconsideration or appeal based on a withdrawn claim. You must file a new application if you later wish to claim benefits.

1515.2. Can you withdraw your application after SSA makes a decision on your claim?

You may withdraw your application after we make a decision on your claim if the conditions in the above section are met **and** if:

- A. All individuals whose entitlement would be voided by the withdrawal agree, in writing, to the withdrawal; and
- B. All affected individuals repay any benefits received based upon entitlement that is voided by the withdrawal.

Even if you withdraw a claim, we keep your application form and all related papers.

1515.3. Can an application be withdrawn after a claimant dies?

After the claimant's death, an application may be withdrawn, regardless of whether we have made a decision on it if:

- A. The application was for retirement benefits that would be reduced because of the claimant's age;
- B. The claimant died before we certified his or her benefit entitlement to the Treasury Department for payment;
- C. A written request for withdrawal is filed by or for the person eligible for widow(er)'s benefits based on the claimant's earnings; and
- D. The conditions in (A) and (B) of the above section are met.

1515.4. What is the effective date of withdrawal?

Ordinarily, the effective date of the withdrawal is the day we receive the request. However, the mailing date, as shown by the U.S. postmark, may be used if it works to your advantage.

1515.5. Can you cancel a request to withdraw an application?

You may cancel a request to withdraw an application if you file a written request at a proper place (see §1505), and the claimant is alive at the time you file the request for cancellation. For a cancellation request received after we approved the withdrawal, you must file the request no later than 60 days after the date of the notice of approval. (To withdraw from medical insurance after a period of entitlement, see Chapter 24.)

1516. How do you make a request to withdraw a claim?

We accept any written request for withdrawal of a claim. However, we have a special form for this purpose. You (the claimant) or someone acting on your behalf must sign the withdrawal request. Be sure to include a statement showing that you realize the effects of this action.

1517. Time limit for applying for lump-sum death payment.

1517.1. What is the time limit for applying for the lump-sum death payment?

If you are eligible for the lump-sum death payment, you must file the application within a two-year period.

Note: If you are the widow(er) of the deceased worker and you were entitled to spouse's benefits for the month before the month that the worker died, you do not need to file an application for the lump-sum.

1517.2. When does the two-year filing period end?

Normally, the two-year filing period ends with the second anniversary of the insured person's death. However, under the conditions set out in the following sections, the filing period may be extended. Also, there are conditions for extending the filing period for members of the U.S. Armed Forces.

Note: If the last day of the filing period is a Saturday, Sunday, legal holiday, or other non-work day for Federal employees set by statute or Executive Order, the application may be filed on the next work day.

1518. Can you file an application for the lump-sum death payment after the two-year filing period?

We may accept an application filed after the two-year filing period following the worker's death, provided there is good cause (defined in §1519) for your failure to file the application within that period.

1519. Good cause defined.

1519.1. What does “good cause” mean?

“Good cause” means that you did not file the lump-sum death payment application within the time limit because of:

- A. Circumstances beyond your control, such as extended illness, communication difficulties, etc.;
- B. Incorrect or incomplete information given to you by us;
- C. Your efforts to get the evidence to support the claim, not realizing you could file the application within the time limit and submit the supporting evidence later; or
- D. Unusual or unavoidable circumstances that show that you could not reasonably be expected to have been aware of the need to file the application within a specified period.

1519.2. When is good cause NOT established?

Good cause is not established if:

- A. You were informed that an application for the lump-sum death payment had to be filed within the initial two-year period; and
- B. You did not file the application because of neglect, or because you did not then want to claim the lump-sum death payment.

1520. What is the time limit for filing evidence of one-half support?

In order to establish potential entitlement to benefits on the insured worker's Social Security record, parents must file evidence of one-half support within the two-year time limit. The two-year period within which the evidence of support must be filed depends upon the circumstances. (See §423.)

We may extend the time if good cause, as explained in §1519, is established for failure to file the evidence within the time limit.

CHAPTER 16

REPRESENTATIVE PAYEES

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1600. Appointment of a representative payee.

1600.1. What is a representative payee?

A representative payee is a person or organization selected to receive cash benefit payments on behalf of a beneficiary.

1600.2. What is SSA's policy on appointment of representative payees?

Our policy is that legally competent adult beneficiaries have the right to manage their own cash benefit payments. However, where there is evidence that a beneficiary is not able to manage or direct the management of benefit payments in his or her own best interests, representative payment may be made.

1600.3. What does this chapter cover?

This chapter provides guidance on:

- A. What constitutes incapability to manage or direct the management of funds;
- B. What determines the need for and selection of a representative payee; and
- C. What is proper use of the benefit payments by the representative payee.

1601. Interest of the beneficiary.

1601.1. When does SSA select a representative payee?

We select either a person or an organization to receive benefit payments if the beneficiary is unable to handle his or her benefits and the beneficiary's interests are best served by doing so.

1601.2. Must the beneficiary be declared incompetent before a representative payee is selected?

No, the decision can be made regardless of the legal competency or incompetency of the beneficiary; however, if a beneficiary is legally incompetent, they must have a payee.

1601.3. What evidence must be provided before a representative payee is selected?

Convincing evidence of an adult beneficiary's incapability of managing his or her funds must be provided before we may find them to be incapable and in their best interest to designate a representative payee. (See §§ 1604-1606 for acceptable evidence of mental or physical incapability.)

1602. Beneficiary under age 18.

1602.1. If the beneficiary is under age 18, is a representative payee selected?

Yes, a beneficiary under age 18 is generally considered incapable of managing benefit payments. A representative payee is selected to receive payments on the beneficiary's behalf.

1602.2. When can payments be made directly to beneficiaries under age 18?

Payments may be made directly to a beneficiary under age 18 if:

- A. The beneficiary is age 15 or over; and
- B. It serves the beneficiary's best interests; and
- C. The beneficiary does not have a legal guardian; and
- D. The beneficiary is:
 - 1. Receiving disability insurance benefits on his or her own Social Security earnings record; or
 - 2. Serving in the military services; or
 - 3. Self-supporting and living alone; or
 - 4. A parent filing for himself or herself and has experience in handling his or her own finances; or
 - 5. Capable of using the benefits to provide for his or her own current needs and no qualified payee is available; or
 - 6. Within seven months of turning age 18 and is initially filing an application for benefits.

Note: If a minor beneficiary has the status of an adult under State law, he or she may be paid directly.

1603. Beneficiary over age 18.

1603.1. Are payments made directly to individuals over age 18?

Yes, payment is made directly to a beneficiary age 18 or older unless the individual:

- A. Is judged legally incompetent;
- B. Is mentally incapable of managing the benefit payments; or
- C. Is physically incapable of managing or directing the management of the benefit payments.

1603.2. What is required for a decision of incapability?

A valid decision of incapability can be made only if established by convincing evidence. See §§1604-1606 for the definition of convincing evidence.

1603.3. If the decision has not been made, are the direct payments continued?

Yes, benefits generally continue to be paid directly to a beneficiary who is:

- A. Legally competent;
- B. Age 18 or over; and
- C. Receiving direct payment of benefits, but may be incapable of managing these payments.

Direct payments are made until information and evidence is gathered to determine that a representative payee is needed, and who that payee will be.

1604. What evidence shows a beneficiary's inability to manage benefit payments?

For a beneficiary age 18 or older, convincing evidence must be provided of his or her inability to manage or direct the management of benefit payments before a representative payee can be selected. The evidence may be:

- A. Medical or legal findings; or
- B. Lay evidence, such as statements of relatives, friends, and other people in a position to know and observe the beneficiary.

1605. What documentation is required if a court has found the beneficiary to be incompetent?

If a court has found a beneficiary to be legally incompetent, or a legal guardian has been appointed, a certified copy of the court order must be submitted to SSA. We assume that the beneficiary cannot manage funds if:

- A. A recent court finding of incompetence is in effect; or
- B. The appointment of a legal guardian was the result of a court finding of legal incompetence.

If the legal finding of incompetence is more than one year old, court certification that the order is still in effect must be obtained. In addition, a court order restoring the beneficiary's rights is required.

Note: As used here, a "legal guardian" means a person who has been appointed or authorized by a court, or by law, to assume control of and responsibility for the beneficiary.

1606. Medical evidence incapability.

1606.1. What medical evidence is required to show that a beneficiary is incapable?

Medical evidence of a person's inability to handle benefit payments depends on the situation, as follows:

- A. **If the beneficiary is not in an institution:** A signed statement from a physician who examined the beneficiary within the past year and knows of the beneficiary's present condition;
- B. **If the beneficiary is or was recently in an institution which has a medical staff or medical officer (physician) in attendance:** A signed statement by the medical officer of the institution; or
- C. **If the beneficiary is in an institution that does not have a physician in attendance:** A statement completed by a physician called in to examine the beneficiary.

1606.2. What information must be included in the physician's statement?

The physician's statement must give:

- A. A medical diagnosis;
- B. Prognosis; and
- C. An opinion of the beneficiary's capability to manage or direct the management of benefit payments.

Special forms for this purpose are available from Social Security offices.

1607. Categories of payees.

1607.1. How are payees selected?

The main factor in the selection of a payee is determining what is in the beneficiary's best interest. The categories of payees considered most likely to promote the beneficiary's best interest are listed in §1608 for beneficiaries under age 18 and §1609 for beneficiaries age 18 or older.

1607.2. What factors are considered in selecting a payee?

We consider the following factors in selecting a payee:

- A. The relationship of the person to the beneficiary;
- B. The person's concern for the beneficiary's well-being;
- C. The ability of the person to act in the beneficiary's best interest;
- D. Whether the potential payee has custody of the beneficiary; and

E. Whether the potential payee is in a position to know of and look after the needs of the beneficiary.

1608. What is the usual order of preference in selecting a payee for a beneficiary under age 18?

The usual order of preference in selecting a payee for a beneficiary under age 18 is as follows:

- A. A natural or adoptive parent who has custody of the beneficiary or a court-appointed legal guardian;
- B. A natural or adoptive parent who does not have custody of the beneficiary but:
 - 1. Contributes toward the beneficiary's support; and
 - 2. Demonstrates strong concern for the beneficiary's well-being.
- C. A relative or stepparent who has custody of the beneficiary;
- D. Any one of the following:
 - 1. A relative who does not have custody of the beneficiary but contributes toward the beneficiary's support and demonstrates concern for the beneficiary's well-being; or
 - 2. A friend with custody who provides for the beneficiary's needs; or
 - 3. An authorized social agency that has custody of the beneficiary but has not been awarded custody by the court;
- E. A relative or close friend who does not have custody of the beneficiary but demonstrates strong concern for the beneficiary's well-being; and
- F. An authorized social agency or custodial institution.

1609. Selecting a payee for beneficiaries age 18 or over.

1609.1. What is the usual order of preference in selecting a payee for a beneficiary age 18 or over?

The usual order of preference in selecting a payee for a beneficiary 18 or over is as follows:

- A. A legal guardian, spouse, or other relative who has custody of the beneficiary, or who shows a strong concern for the personal welfare of the beneficiary;
- B. A friend who has custody of the beneficiary, or who shows strong concern for the beneficiary's personal welfare;
- C. Any one of the following:

1. A public or nonprofit agency or institution having custody of the beneficiary;
 2. Federal institution without custody; or
 3. A statutory guardian or voluntary conservator;
- D. A private institution operated for profit and licensed under State law that has custody of the beneficiary;
- E. People other than the above who can carry out the responsibilities of a payee and who are able and willing to serve, without reimbursement for services, as a payee for a beneficiary; e.g., members of community groups or organizations who volunteer to serve as a payee for a beneficiary; and
- F. A friend without custody but who demonstrates a strong concern for the personal welfare of the beneficiary.

1609.2. What is the usual order of preference in selecting a payee for an incapable beneficiary age 18 or over who has a substance abuse condition?

The usual order of preference in selecting a payee for an incapable beneficiary age 18 or over who has a substance abuse condition is as follows:

- A. A community-based nonprofit social service agency licensed or bonded by the State;
- B. A Federal, State, or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities;
- C. A State or local government agency with fiduciary responsibilities; and
- D. A designee of an agency (other than of a Federal agency) referred to above, if appropriate.

1609.3. Can a family member be selected?

We may select a family member as payee if the family member:

- A. Demonstrates strong concern;
- B. Is able and willing to exercise adequate supervision of the beneficiary's behavior; and
- C. Is actively involved in the beneficiary's treatment program).

1609.4. Who is selected if the preferred payees are not available?

If none of the above preferred payees are available, a payee is selected from alternate sources in the following order of preference:

- A. A legal guardian who has custody or who demonstrates strong concern for the personal welfare of the beneficiary;
- B. A treatment provider;
- C. A relative or friend who has custody of the beneficiary; (A friend is an individual with longstanding ties to the beneficiary who demonstrates strong concern for the welfare of the beneficiary.)
- D. A public or nonprofit agency or institution having custody of the beneficiary;
- E. A private institution, operated for profit and licensed under State law, that has custody of the beneficiary;
- F. People other than the above who are qualified to carry out the responsibilities of a payee for a beneficiary; e.g., members of community groups or organizations who volunteer to serve as payee for a beneficiary; and
- G. A friend who shows strong concern for the personal welfare of the beneficiary.

1610. Evidence required for selection.

1610.1. What evidence must be given to SSA before a payee is selected?

The payee applicant must produce documentation of his or her identity and information showing the following:

- A. The relationship to the beneficiary;
- B. Concern and responsibility for the care of the beneficiary;
- C. The availability of other potential payees; and
- D. Their SSN/EIN.

1610.2. What evidence of court appointment must be given to SSA?

A guardian, trustee, committee, conservator, or other fiduciary must submit a certified copy of the letters or court order of appointment showing that the appointment is still in full force and effect.

1610.3. Will SSA request information after the selection?

Any time after the selection of a representative payee, we may request the payee to furnish information showing a continuing relationship to the beneficiary and a continuing responsibility for the care of the beneficiary.

1610.4. What happens if the payee does not submit the required information?

If we do not receive the information when requested, payments to the payee may stop, unless good reason for not fulfilling the request is determined and the requested information is received.

1611. Advance notice from SSA of proposed selection.

1611.1. How is notice made of a proposed decision?

When we intend to make representative payment and to name a payee, we send the beneficiary (or the individual acting on his or her behalf) a notice of our proposed actions. The notice tells the person why we plan to name a representative payee and who that payee will be.

1611.2. Can the beneficiary object to the proposed decisions?

Yes, the notice requests the beneficiary (or the individual acting on his or her behalf) to inform us if he or she objects to either the representative payment of benefits or the selected payee.

1611.3. What happens if there is an objection?

If the beneficiary (or the individual acting on his or her behalf) objects to either proposed action, he or she may:

- A. Review the evidence; and
- B. Submit any additional evidence.

If there is an objection, we will review the proposed determination, consider any additional information received, and issue our determination. If the beneficiary (or the individual acting on his or her behalf) objects to either decision, he or she may request a reconsideration.

1611.4. What happens if there is no objection?

If the beneficiary (or the individual acting on his or her behalf) does not object to the proposed actions, we issue the decision.

1611.5. Can objections be raised after the decision is made?

Yes. If the beneficiary (or the individual acting on his or her behalf) is dissatisfied, he or she may request a reconsideration.

1612. When is a new representative payee selected?

A new representative payee is selected if the current representative payee:

- A. Dies;

- B. Has been determined to have misused the beneficiary's benefits as found by SSA or a court of competent jurisdiction;
- C. Is unable to manage the benefit payments;
- D. No longer wishes to serve as payee;
- E. Fails to use and account for the benefit payments properly;
- F. Is no longer responsible for the care or welfare of the beneficiary; or
- G. Is otherwise no longer suitable to serve as payee.

1613. Can direct payments be made after a beneficiary has been found to be incapable?

Yes, if a reevaluation of capability shows that the beneficiary can manage or direct the management of benefit payments. If the beneficiary is mentally and physically capable, direct payments can be resumed.

1614. Evidence of current ability to manage benefit payments.

1614.1. When should a beneficiary submit evidence of capability?

When a beneficiary, age 18 or over, feels able to manage benefit payments, he or she should submit evidence of capability.

1614.2. What evidence must be submitted?

The beneficiary may submit:

- A. A signed statement from a physician or from a medical officer of the institution where he or she is or was confined, showing the beneficiary's present capability of managing funds (see §1606);
- B. Other evidence that establishes the beneficiary's ability to manage or direct the management of benefits; or
- C. In a case where he or she was found legally incompetent, a certified copy of the court order restoring the beneficiary's rights.

1615. What are the responsibilities of a representative payee?

The responsibilities of a representative payee are to:

- A. Determine the beneficiary's current and future needs and to use the benefits in the best interests of the beneficiary, conforming to SSA regulations and policies;
- B. Apply the benefit payments only for the beneficiary's use and welfare (see §1616);
- C. Maintain a continuing awareness of the beneficiary's needs and condition. If the beneficiary does not live with the representative

payee, this should be done by contact, such as visiting the beneficiary and consultations with custodians;

- D. Notify us of any change in his or her circumstances that would affect performance of the payee responsibilities;
- E. Report to us any event that will affect the amount of benefits the beneficiary receives or the right of the beneficiary to Social Security or SSI benefits; and
- F. Give us written reports accounting for the use of the benefits, when requested to do so.

1616. Use of benefit payments.

1616.1. What is the proper disbursement of benefits?

A representative payee must apply the payments for the use and benefit of the entitled individual. Social Security and/or SSI benefits are properly disbursed if they are:

- A. Spent for the beneficiary's current and reasonably foreseeable needs (see §1617); or
- B. Saved and invested for the beneficiary, if current needs are being met (see §1619).

1616.2. May payments be applied to the needs of other individuals?

Yes. If the current and reasonably foreseeable future needs of a Social Security beneficiary are being met, part of the benefits may also be used to support a spouse, child, or parent who is the beneficiary's legal dependent.

1616.3. How may benefits be used if a beneficiary is institutionalized?

For institutionalized beneficiaries whose current needs are being met because they are eligible for Medicaid, part of the beneficiary's Social Security benefits may be used for:

- A. The support of the community spouse (the legal spouse of the beneficiary); and
- B. Any dependent family member as specified in the Medicaid determination.

Note: SSI benefits may not be used to support a beneficiary's dependents.

1616.4. What is misuse of Social Security benefits?

Misuse occurs when a representative payee does not use Social Security benefits and/or SSI payments for the beneficiary's current and future needs, or does not save them for the beneficiary.

1616.5. Does a representative payee who misuses benefits owe the beneficiary the money?

Yes, a representative payee who misuses Social Security benefits and/or SSI payments owes the beneficiary that money.

1616.6. What are the penalties for misuse of benefits?

When a representative payee misuses benefits, we may refer the case for criminal prosecution. The penalty upon conviction for the misuse of benefits by a representative payee may be a fine of up to \$25,000, imprisonment up to five years, or both.

1617. Current needs of beneficiary.

1617.1. What are “current needs”?

“Current needs” are the immediate and reasonably foreseeable essentials for shelter, food, clothing, utilities, medical care and insurance, dental care, personal hygiene, education, and the rehabilitation expenses of disabled beneficiaries.

1617.2. For beneficiaries in institutions or nursing homes, what expenditures are given priority?

If a beneficiary is in an institution or nursing home, the representative payee will give priority to expenditure of benefits for the current maintenance of the beneficiary. Current maintenance includes:

- A. Customary charges made by an institution/nursing home for care provided the beneficiary;
- B. Expenditures for items that will aid in the beneficiary's recovery or release; and
- C. Expenses for personal needs to improve the beneficiary's condition while in the institution.

1617.3. How much money should be set aside for personal needs of beneficiaries who are in institutions or nursing homes?

The representative payee is required to set aside at least \$30 each month for a beneficiary living in an institution or nursing home, to be used for the beneficiary's personal needs or saved on his or her behalf.

1617.4. How should the representative payee evaluate and respond to the beneficiary's needs?

The representative payee is responsible for knowing and providing for the total needs of the beneficiary. Current needs should never be sacrificed to pay other expenses, to conserve or invest benefits, or to accumulate benefits for a future purpose.

1618. Past debts of beneficiaries.

1618.1. Can benefits be seized by creditors?

In order to assure an income for a beneficiary's current needs, Section 207 of the Social Security Act specifically exempts benefits from seizure by creditors. However, there are some exceptions.

1618.2. What are the exceptions?

SSA may garnish benefits for the legal enforcement of providing child support and alimony as permitted under section 459 of the Social Security Act, and the IRS may levy for taxes owed.

1618.3. Should representative payees use benefits to cover bills incurred before the payee began receiving the payments?

A representative payee is not required to use benefits to pay bills incurred by a beneficiary before the first month that benefits are paid to the representative payee. However, a representative payee may do so if the beneficiary's current and reasonably foreseeable needs are met. If the debt is owed to the representative payee, approval must be obtained from Social Security.

1618.4. What items beyond current needs should be paid?

Current insurance premiums and current payments on realty in which the beneficiary has an interest should be paid if all basic needs are being met. These obligations are considered current even if incurred before the first month for which the representative payee received payment.

1618.5. Where can further information on payment of past debts be obtained?

Questions concerning payment of past debts should be referred to the local Social Security office.

1619. Savings for beneficiary.

1619.1. How should benefits be handled that are not required for current needs?

Benefits not required for current or reasonably foreseeable needs, or for the support of legal dependents, must be conserved or invested for the beneficiary. Part of the benefit can be set aside for definite foreseeable needs, such as education for a young person or rehabilitation for a person who has been disabled.

1619.2. How should investment of benefits be made?

Accumulated benefits of more than \$500 should be placed in interest-yielding investments on behalf of the beneficiary. Any interest and

dividend payments that result from an investment are the property of the beneficiary and may not be considered to be the property of the payee.

1619.3. What investments are preferred?

Preferred investments include:

- A. U.S. Savings Bonds; or
- B. Deposits in an insured interest or dividend paying account in a bank, trust company, savings and loan association, or credit union that is insured under either Federal or State law.

Payees may otherwise invest funds according to State law governing the investment of trust estates by trustees.

1619.4. Are there restrictions on investment of benefits?

Yes, guidelines for managing the beneficiary's money are as follows:

- A. Benefits may not be invested in any company, corporation, or association when such an investment will involve the representative payee in a conflict of interest;
- B. Money should not be kept at home or mingled with the representative payee's own money or with other funds; and
- C. Accurate records should be kept in order to account for the use of benefits.

1619.5. In what form should the investments be held?

All conservation and investments must be in a form that shows that the payee holds the property in trust for the beneficiary. The preferred forms of accounts and registrations are the following:

- A. U.S. Savings Bonds bought for a beneficiary under age 18 - (**Name of Beneficiary**), (**Social Security Number**), a minor, for whom (**Name of Payee**) is representative payee for Social Security benefits.
- B. U.S. Savings Bonds bought for a beneficiary age 18 or older - (**Name of Beneficiary**), (**Social Security Number**), for whom (**Name of Payee**) is representative payee for Social Security benefits.
- C. Various forms of accounts recognized by banks, trust companies, savings and loan associations, or credit unions as establishing the trust relationship between the beneficiary and the representative payee are acceptable as long as they clearly establish that relationship under the applicable State law.
- D. For a savings or checking account, an acceptable title is (**Name of Payee**), representative payee for (**Name of Beneficiary**). A statement such as (**Name of Payee**) in trust for (**Name of**

Beneficiary) should not be used because some States treat the funds in this type of account as belonging to the representative payee.

Note: The examples listed above are not all-inclusive. The payee should always consult with the bank to verify that, under State law, the titling of an account:

- A. Shows that the payee has only a fiduciary interest;
- B. Permits the payee ready access to the funds when needed for the beneficiary's current maintenance; and
- C. Does not permit the beneficiary to have direct access to the funds.

1620. Blind or disabled children receiving SSI.

1620.1. What funds must be paid into a dedicated account?

Certain large, past-due SSI payments to blind or disabled children covering more than six months of benefits must be paid directly into a separate, “dedicated account” in a financial institution.

1620.2. What is a “dedicated account”?

We call this separate account a “dedicated account” because funds in this account may be used only for certain expenses, primarily those related to the child's disability.

1620.3. How should the dedicated account be maintained?

The dedicated account must be maintained as follows:

- A. It should be separate from any other savings or checking account set up for the beneficiary; and
- B. Except for certain subsequent underpayments, no other funds may be combined in the account.

1620.4. Is money in the account counted as a resource?

Money in the dedicated account is excluded from counting as a resource. Also, interest earned on the money in a dedicated account does not count as income or a resource.

1620.5. How can the money in a dedicated account be used?

Money in a dedicated account must be used only for the following allowable expenses for the benefit of the child:

- A. Medical treatment and education or job skills training;
- B. If related to the child's disability, personal needs assistance, special equipment, housing modification, and therapy or rehabilitation; and

C. Any other item or service related to the child's disability that SSA determines to be appropriate.

If the payee is not clear if an expense in this category is appropriate, the payee should first get approval from the local Social Security office.

1620.6. If the payee uses the money incorrectly, what should be done?

A payee who uses money from the dedicated account for anything other than the expenses shown above must repay the SSA from his or her own funds in an amount equal to what was spent.

1620.7. What records must be kept of the account?

The representative payee must keep a record of all money taken from this account and receipts for all items or services bought. These records must be maintained for a minimum of two years because we may periodically ask to review these records.

1621. When an individual stops serving as representative payee, what should be done with a beneficiary's savings?

A representative payee who is no longer serving as a payee must turn over any saved benefits and any interest earned on the benefits to us for transfer to the new payee. In rare instances, we may ask the former payee to send the benefits directly to the new payee, or to the beneficiary if he or she is now able to handle funds.

We will inform the former representative payee what to do and how to transfer funds.

1622. Accounting for use of benefits.

1622.1. How do representative payees account for their use of benefits?

An annual report form (*Representative Payee Report*) is sent to representative payees for them to explain how Social Security benefits and/or SSI payments were used during the 12-month report period. Payees should keep records throughout the year so that an accurate accounting of benefits can be provided.

1622.2. Do State mental institutions receive this report form?

No, State mental institutions are subject to a different monitoring process (see §1623).

1622.3. How is the representative payee's performance evaluated?

To help us assess the payee's performance, the report asks for information such as:

- A. Whether the beneficiary lived alone, or with the same person, or in the same institution during the report period;
- B. How the Social Security benefits and/or SSI payments were used;
- C. How much of the benefit payments were saved and how the savings were invested; and
- D. Whether the payee was convicted of a felony during the report period.

1622.4. Does SSA request additional information?

Depending on the payee's responses, we may interview the payee, beneficiary, and custodian, if appropriate, and complete a more detailed report (*Representative Payee Evaluation Report*) in order to determine the continued suitability of the representative payee.

1623. State mental institutions that serve as representative payees.

1623.1. Must State mental institutions complete annual report forms?

No. Most State mental institutions that participate in the onsite review program and serve as representative payee for a number of beneficiaries are exempt from completing an annual report form

1623.2. How are those State mental institutions monitored?

Those participating State mental institutions are monitored through a process called onsite review.

1623.3. How often are State mental institutions monitored?

Each participating institution is reviewed by SSA once every three years. However, if the institution's performance is unsatisfactory, more frequent reviews may be required.

CHAPTER 17

EVIDENCE REQUIRED TO ESTABLISH RIGHT TO BENEFITS

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1700. Evidence requirements.

1700.1. Do you need to provide evidence to support your claim for benefits?

You must prove your identity and that you have met all the requirements necessary to be entitled to the benefit you are claiming. The Social Security office handling the claim will advise you as to what you must prove and what evidence you need to submit.

(This Chapter does not discuss evidence of disability; it is discussed in Chapter 5. Nor does it discuss entitlement to hospital insurance protection or medical insurance coverage. See Chapter 24 for a discussion of these programs.)

1700.2. What evidence do you need to submit for a claim for monthly benefits?

The following chart summarizes the evidence you usually need to submit to us to get monthly benefits. However, in some cases, additional evidence may be required.

Evidence Needed to Support Claims for Monthly Benefits

If the beneficiary is....	Then the evidence the claimant needs to submit is... ⁽¹⁾							
	Age	Relationships			Dependency or Support	School Attendance	Child-in-Care	Death of Worker
		Marriage	Divorced	Parent-Child				
Insured person ⁽²⁾	X	-	-	-	-	-	-	-
Spouse (62 or over)	X	X	-	-	-	-	-	-
Spouse under 62 (child in care)	-	X	-	-	-	-	X	-
Divorced spouse (62 or over)	X	X	X	-	-	-	-	-
Child ⁽²⁾	X	-	-	X	X ⁽³⁾	X ⁽⁴⁾	-	X ⁽⁶⁾
Widow(er) (60 or over, 50 or over if disabled) ⁽²⁾	X	X	-	-	-	-	-	X
Surviving divorced spouse ⁽²⁾	X	X	X	-	-	-	-	X
Mother/Father or surviving divorced mother or father (child in care)	-	X	X ⁽⁵⁾	X	-	-	X	X
Parent	X	-	-	X	X	-	-	X

⁽¹⁾ See Chapter 3, Chapter 4, or Chapter 5 for all the requirements for specific types of benefits.

- (2) If disability is involved, see Chapter 5 for evidence required to establish disability.
- (3) A legitimate or adopted child is ordinarily considered dependent on his or her parent; however, certain evidence may be needed in the case of other types of children.
- (4) Proof of full-time school attendance required if child is 18-19 and is not disabled.
- (5) Surviving divorced mother or father only.
- (6) For survivor claims.

1700.3. What evidence do you need to submit for a claim for the lump-sum death payment?

The following chart summarizes the evidence you usually need to submit to us to get the lump-sum death payment. However, in some cases, additional evidence may be required.

Evidence Needed to Support Claims for Lump-Sum Death Payment

If the beneficiary is....	Then the evidence the claimant needs to submit is...							
	Age	Relationships			Dependency or Support	School Attendance	Child-in-Care	Death of Worker
		Marriage	Divorced	Parent-Child				
Surviving spouse living in same household	-	X	-	-	-	-	-	X
Eligible surviving spouse, excluding divorced spouse	X(3)	X(3)	-	-	-	-	-	X
Eligible children	X(3)	-	-	X(3)	X (1,3)	X (2,3)	-	X

(1) A legitimate or adopted child is ordinarily considered dependent on his or her parent; however, certain evidence may be needed in the case of other types of children.

(2) Proof of full-time school attendance required if child is 18-19 and is not disabled.

(3) To qualify for the lump-sum, the claimant must present evidence that proves he or she does (or could) qualify for monthly benefits in the month the worker died.

1701. Can information submitted to SSA be disclosed anywhere else?

Information you submit to us in connection with your claim cannot be disclosed to any other person, except for very limited purposes. (See §118.)

1702. Type of evidence to be submitted — general.

1702.1. What types of evidence can you submit to support your claim?

Descriptions of the various types of evidence you should submit with your claim are below:

- A. **An original document or a copy of the original record.** The document should be certified by the custodian of the applicant. Documents in foreign languages are acceptable and can be translated by Government translators. If you submit a photocopy of a document as evidence, you must also submit the original document for comparison. Otherwise, we will return the photocopy, unless it is certified by the official custodian of the original document to be an exact copy of the original.
- B. **A statement of the individual.** Where an individual's statement is submitted as evidence, it should be complete and detailed. Submit any supporting evidence if it is available. Statements must be signed but do not need to be notarized. If you sign your statement by mark, two persons who know you need to sign as witnesses.

1702.2. What happens if you give false information?

Make sure you have full knowledge of any statement you sign. Be aware that your statement is used for Social Security purposes. **Any false statement you make in an attempt to obtain benefits not due you or another person is punishable under the Social Security Act by fine, imprisonment, or both.** Other penalties may also apply under another part of the United States Code. (See §142.)

1703. What factors do we consider when we evaluate evidence you submit?

When we evaluate a particular document you submit as evidence, we consider factors such as:

- A. The source of information from which the record was made. Was the person originally furnishing the information in a position to know the facts?
- B. The purpose for which the record was made. Was there any reason to falsify or distort the facts?
- C. The formality of the document. Was it made under oath? Is it a public record? Were there witnesses to its execution? Was a penalty provided for a false statement?
- D. The age of the document. Was the record made at, or shortly after, the time the event occurred?
- E. The custody of the document. Has it been in possession of someone who might have reason to change it?
- F. Its appearance. Lack of erasures, etc. Does it appear altered from its original form?
- G. The consistency of all the evidence relating to a particular matter; and
- H. Whether the person furnishing the information has an interest in the claim for which the proof is needed.

1704. When do you need to provide proof of age?

You must submit proof of age when age is a factor in determining benefit rights. For example:

- A. Age of child for child's insurance benefits (see Chapter 3 for age requirement);
- B. Age 62 and over for retirement or dependent's insurance benefits;
- C. Age of deceased worker when it affects the benefit computation or insured status; or
- D. Age of disabled worker for disability insurance benefits.

1705. How do you prove your age?

The following types of evidence, established or recorded before your fifth birthday, are acceptable in proving your age:

- A. A public record of your birth; or
- B. A religious record of your birth or baptism.

If such a document is unavailable, you must submit another document or documents that may serve as the basis for a determination of your

date of birth. The evidence must be confirmed by other evidence or by information contained in our records.

1706. Other evidence of date of birth.

1706.1. Can you submit other evidence to prove your date of birth?

If a public or religious record of your birth established before your fifth birthday is not available, we accept other documentation.

1706.2. What other evidence can you submit to prove your of date of birth?

Some records you may submit are listed below. These records must show your date of birth or age. This list is not complete or listed in order of importance:

- A. School record;
- B. Census record;
- C. Bible or other family record;
- D. Religious record of confirmation or baptism in youth or early adult life;
- E. Insurance policy;
- F. Marriage record;
- G. Employment record;
- H. Labor union record;
- I. Fraternal organization record;
- J. Military record;
- K. Voting record;
- L. Vaccination record;
- M. Delayed birth certificate;
- N. Birth certificate of child showing age of parent;
- O. Physician's or midwife's record of birth;
- P. Passport;
- Q. Immigration record; and
- R. Naturalization record.

1706.3. What evidence do you need to submit if you are foreign-born?

If you were born in a foreign country, submit a record of your entry into the U.S. Also, submit your naturalization record, if applicable.

1707. How natural parent-child relationship is proved.

1707.1. How do you prove a natural parent-child relationship?

You can prove a natural legitimate parent-child relationship by the child's birth or baptismal certificate, if it shows you as the child's parent.

1707.2. Can a child born out of wedlock be considered your child for Social Security purposes?

If the child was born out of wedlock, he or she may be considered your child for Social Security purposes if he or she:

- A. Is legitimated; or
- B. Can inherit your intestate personal property under applicable State law.

The evidence required depends on the State law requirements for legitimization or inheritance rights.

1708. What evidence is required for a child born out of wedlock to be considered yours?

If your child was born out of wedlock, he or she may be considered your child if he or she is the child of an invalid ceremonial marriage, or if the special test described in §324(E) is met. The evidence required to meet this special test may be:

- A. A written acknowledgment by you stating the child is your son or daughter;
- B. A court decree finding that you are the father or mother;
- C. A court order directing you to support the child because the child is your son or daughter; or
- D. Other satisfactory evidence that you were the father or mother of the child and were living with, or contributing to, the child's support.

1709. What constitutes a written acknowledgment?

A written acknowledgment can be any writing from you confirming that the child is your son or daughter. A variety of written statements are acceptable, for example:

- A. An income tax return listing the child as yours;
- B. A soldier's application for an allotment listing the child as yours;
- C. A will referring to the child as yours;
- D. An application for insurance naming the child as yours (e.g., as beneficiary); or

E. A letter indicating the child is yours.

1710. Does a court decree of paternity prove a child is yours?

A court decree finding that you are the child's mother or father must:

- A. Identify you and the child;
- B. Include a specific finding that you are the child's biological parent; and
- C. Must have been issued before your death and be certified by the proper official.

1711. Does a court order for support prove a child is yours?

A court order for support must:

- A. Identify the child;
- B. Direct you to contribute to the child's support;
- C. Either name you as the child's parent or have been issued under a child support statute; and
- D. Have been issued before your death.

1712. What other evidence proves paternity?

Several types of evidence may prove that you are a child's father, including:

- A. Hospital, religious, or school records;
- B. A court order or decree that does not meet the requirements for court orders set out above;
- C. A statement from the attending physician, relative, or other person who knows the child's relationship to you, including the basis for that knowledge; and
- D. Evidence that you and the child's mother were living together at the time of the child's conception.

1713. How do you prove a legal adoption?

You can prove the legal adoption of a child by an amended birth certificate issued as the result of an adoption. If the date of a U.S. adoption is material, it may be proved by:

- A. Records of the court that granted the adoption;
- B. Official notice you received as the adopting parent(s);
- C. Records of the State's Attorney or child welfare division; or
- D. The adoption decree (if you have it and voluntarily submit it).

1714. How do you prove a step-relationship.

You can prove a step-relationship by:

- A. Proving the relationship between the child and the natural (or adopting) parent (see §§1707-1713); and
- B. Proving the marriage between the natural (or adopting) parent and the stepparent (see §1716 and §1717).

1715. School attendance.

1715.1. When is evidence of school attendance needed?

We require evidence of full-time school attendance (see §344) if a child age 18-19 is not under a disability.

1715.2. How is evidence of school attendance obtained?

We obtain the necessary information from the child. This information is verified by the school or schools involved.

1716. Evidence of ceremonial marriage.

1716.1. How do you prove a ceremonial marriage?

You prove a ceremonial marriage by providing:

- A. A certified copy of the public record of the marriage;
- B. A certified copy of the religious record of the marriage; or
- C. The original marriage certificate.

1716.2. Is any other evidence acceptable?

We prefer the types of evidence listed above. If none of this evidence is available, you may submit the following types of evidence:

- A. A signed statement from a member of the clergy or public official who performed the marriage; or
- B. Other evidence of investigative value, e.g., statements of witnesses, newspaper accounts, photos taken of the ceremony.

In some cases, evidence obtained for other purposes may also serve as evidence of marriage. You must provide statements concerning certain details of your marriage and document the fact that the preferred proofs are not available.

1717. Evidence of common-law marriage.

1717.1. How do you prove a common-law marriage?

Evidence to prove a common-law marriage in the States that recognize such marriages must include:

- A. **If the husband and wife are living**, a statement from each and a statement from a blood relative of each;

- B. **If either the husband or wife is dead**, a statement from the surviving widow or widower and statements from two blood relatives of the decedent; or
- C. **If both a husband and wife are dead**, a statement from a blood relative of the husband and from a blood relative of the wife.

1717.2. How should the statements be made?

The statements of the husband, wife, and relatives must be made on special forms available at any Social Security office. You must fully answer all items on the forms and in your own words. Also, submit evidence that confirms that you had a common-law marriage, such as mortgage/rent receipts, bank records, insurance policies, etc.

1717.3. What if you cannot get statements from your relatives?

If you adequately explain why you cannot obtain the required statements from relatives, you may submit statements from other persons who know the facts. Provide any other investigative evidence relating to your case.

1718. When evidence of termination of prior marriage is required.

1718.1. When do you need to provide evidence that your prior marriage ended?

You may be required to provide evidence that your marriage ended if your right to benefits depends on:

- A. The validity of a later marriage; or
- B. The termination of a prior marriage.

If you are claiming benefits as a divorced spouse, you must establish that the marriage lasted for 10 years before the divorce became effective.

1718.2. How does a marriage end?

A valid ceremonial or common-law marriage ends only by death, divorce, or annulment.

1719. Establishing termination of marriage.

1719.1. How do you prove your marriage ended?

You prove that your marriage ended by providing:

- A. A certified copy of the divorce decree;
- B. A certified copy of the annulment decree; or
- C. A certified copy of the death certificate (or other proof of death, see §1720).

1719.2. What other evidence is acceptable?

If none of the above is available, you can submit any other evidence of investigative value. You must explain why none of the items above is available.

1719.3. Do you live in a state that restricts remarriage?

If your prior marriage ended by a divorce in a State that imposes a restriction on remarriage, you must show that your remarriage does not violate the restriction.

1720. Evidence of death.

1720.1. How do you prove someone's death?

You can prove death by providing any the following evidence:

- A. A certified copy of a public record of death;
- B. A statement of death by the funeral director;
- C. A statement of death by the attending physician or the superintendent, physician, or intern of the institution where the person died;
- D. A certified copy of the coroner's report of death or the verdict of the coroner's jury;
- E. A certified copy of an official report of death or finding of death made by an agency or department of the U.S. that is authorized or required to make such a report; or
- F. A finding in the administration of any law of the U.S.

1720.2. What other evidence is acceptable?

If you cannot obtain any of the evidence above, you can submit statements from two or more persons (preferably not related to you) who saw the body. These statements must be complete and indicate the following:

- A. Why none of the types of evidence in (A) through (F) above can be obtained;
- B. The date and place of death;
- C. The date and place of viewing the body;
- D. The cause of death, if known;
- E. The occupation, age, sex, and race of the deceased;
- F. The relationship of the deceased, if any, to the person making the statements; and
- G. The basis for identification of the body.

1720.3. Does a presumptive finding of death by an armed service department prove death?

A presumptive finding of death by an armed service department establishes the fact of death, but not the date of death. The date of death shown by the armed service department in these cases is a statutory date. It is usually a year and a day from the “missing” date, but may be later or earlier. If there is no evidence to establish a later date, the date the individual was “missing” is used as the date of death.

1720.4. How do you prove death in a disappearance case?

In a disappearance case where the body is not recovered, you must clearly prove the death of the missing person. Submit all available evidence, including:

- A. Statements of persons having knowledge of the situation;
- B. Letters or notes left by the missing person that have a bearing on the case;
- C. The results of insurance or police investigations; and
- D. The complete facts surrounding the person's disappearance.

1721. When is a missing person presumed dead?

We presume a person is dead if he or she has been missing from home and has not been heard from for seven years or more. This presumption applies regardless of the reason for the absence.

Once the presumption applies, it can only be disputed if we:

- A. Prove the person is alive; or
- B. Provide an explanation that explains the individual's absence and continued life.

1722. Felonious and intentional homicide.

1722.1. How does the felonious and intentional homicide of the worker affect benefits?

You cannot be entitled to benefits on the worker's earnings record if you were convicted of the felonious and intentional homicide of the worker. Further, you are considered as non-existent when we decide the rights of other persons entitled to benefits on the worker's record.

1722.2. What evidence do you submit if you were convicted or acquitted of the felonious homicide of the worker?

If you were either acquitted or convicted of the felonious homicide of the worker, submit either:

- A. A certification of the final verdict or court record; or

B. A statement from the proper official advising of the nature of the case.

1723. How do you prove that a child is in your care?

You can prove you have a child in your care by providing:

- A. Statements from you;
- B. If you and the child are living apart, a statement from one or both of the following:
 - 1. The person with whom the child is living; or
 - 2. An official of the school the child is attending; and
- C. Statements from other people who know the facts.

We furnish you with the forms you need.

1724. What constitutes evidence of support?

Evidence of support includes your statement and whatever other evidence may be necessary to prove your statement concerning your support. Make sure your statement:

- A. Is on the form we give you. The form is designed to bring out all the information about your total income from all sources during the appropriate period;
- B. Includes the cost of your support during the same period; and
- C. Shows the amount and frequency of your support payments.

1725. Evidence of U.S. citizenship.

1725.1. Why is evidence of U.S. citizenship or lawful alien status necessary?

Evidence of U.S. citizenship or lawful alien status is necessary because:

- A. It is required to pay monthly benefits to an individual who is in the U.S.;
- B. It applies for Title II benefits on December 1, 1996, or later; and
- C. It **may** be required in certain cases, for instance, to determine:
 - 1. The payment of monthly benefits in the U.S. under the lawful presence payment provision coverage status of people working in foreign countries (see §963);
 - 2. The applicability of the alien nonpayment provision (see §1843);
 - 3. Eligibility to hospital or medical insurance protection of a person who is not entitled to cash benefits (see §2402); or
 - 4. Eligibility for special age 72 payments (see §§346-348).

1725.2. How do you prove that you are a U.S. citizen?

You may be a citizen of the U.S. by birth or by naturalization. Acceptable evidence is a birth certificate showing birth within the U.S. Other acceptable evidence of U.S. citizenship includes:

- A. Form N-550 and N-570 (*Certificate of Naturalization* issued by the Immigration and Naturalization Service (INS));
- B. A U.S. passport issued by the U.S. Department of State (DOS);
- C. Form I-197 (*U.S. Citizen Identification Card* issued by INS);
- D. Form FS-240 (*Report of Birth Abroad of a Citizen of the U.S.* issued by DOS);
- E. Form FS-545 (*Certification of Birth* issued by a foreign service post);
- F. Form N-560 and N-561 (*Certificate of Citizenship* issued by INS); or
- G. Form DS-1350 (*Certification of Report of Birth* issued by DOS).

1725.3. How do you prove that you are a lawful alien?

You may be determined to be lawfully present in the U.S. as defined by the Attorney General if you are an alien:

- A. Lawfully admitted for permanent residence;
- B. Admitted as a refugee under section 207 of the Immigration and Nationality Act (INA);
- C. Granted asylum under section 208 of the INA;
- D. Paroled under section 212(d)(5) of the INA (except for aliens paroled for an exclusion hearing or prosecution in the U.S.);
- E. Whose deportation has been withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal has been withheld under section 241(b)(3) of the INA;
- F. Granted conditional entry as a refugee under section 203(a)(7) of the INA as in effect prior to April 1, 1980;
- G. Inspected and admitted as a non-immigrant to the U.S. and who has not violated the applicable terms of your status;
- H. With a pending application for political asylum under section 208(a) of the INA or a pending application for withholding of deportation under section 243(h) of the INA, and employment authorization; or
- I. Belonging to any specific class of aliens permitted to remain in the U.S. under U.S. law or policy, for humanitarian or other public policy reasons.

1726. Evidence of wages.

1726.1. When is evidence of wages needed?

You need to provide evidence of the amount of wages paid to you and the period they were paid if:

- A. The wages are not recorded in the earnings record maintained by us or the Railroad Retirement Board; or
- B. There is reason to believe that the amounts recorded are not correct.

1726.2. What constitutes evidence of your wages?

Evidence must be based directly on your employer's records, if available, and may consist of:

- A. Form W-2 (*Wage and Tax Statement*);
- B. Notice from us to you showing wages credited to your earnings record, e.g., Form SSA-L987 (*Social Security Earnings Information*);
- C. SSA-7011 (*Statement of Employer*) used in claims and earnings discrepancy cases as evidence of non-agricultural wages, if signed by employer or custodian of employer's records;
- D. SSA-1002 (*Statement of Agricultural Employer*) used in claims and earnings discrepancy cases as evidence of agricultural wages, if signed by employer or custodian of employer's records;
- E. Any other statement signed by an employer;
- F. Statement signed by custodian of employer's records;
- G. Certification by SSA of contents of employer's records;
- H. Certification by SSA of contents of employer tax returns in possession of IRS;
- I. Certification by SSA of report of IRS audit of employer's records; or
- J. SSA-4500-U6 (*Federal Determination of Error in State's Wage Reports*) when signed by an authorized State or local official.

1727. What evidence can you submit if your employer's records are not available?

When evidence based directly on employer records is not available, you can submit **two or more** of the following:

- A. Pay envelopes, vouchers, and similar unsigned employer wage statements given to you, a State agency, or another Federal agency (see §1728);
- B. Union records (see §1729);
- C. Your income tax returns (see §1730);

- D. Records of State unemployment compensation agencies based on evidence other than the employer's records (see §1731);
- E. Statements of persons having knowledge of the facts (see §1732);
- F. Your personal records (see §1733); or
- G. Other acceptable evidence.

The types of evidence listed in this section must show clearly the amount of wages paid and when they were paid.

1728. How do we verify your unsigned employer's wage statements?

When you submit pay envelopes, vouchers, and similar unsigned employer wage statements, make sure they:

- A. Show your name and your employer's name;
- B. Show the amount of wages paid and dates of payment or employment;
- C. Are accompanied by your signed statement showing:
 1. When your employer furnished the voucher or wage statements;
 2. Whether your employer made all the entries; and
 3. Whether this information correctly shows the wages paid and dates of employment.

1729. Union records.

1729.1. What information is needed on your union records?

When you submit union records as evidence of your wages, the information you submit must include:

- A. Your name and your employer's name;
- B. The beginning and ending dates of employment;
- C. The amount of wages paid;
- D. Breakdown by calendar quarters of amounts shown on union records;
- E. The name and title of the union official giving the information and the name and local number of the union;
- F. Whether the amounts shown in the records were reported by the employer, shop steward, or you, etc.; and
- G. Intervals at which the reports are made.

1729.2. Are the amounts on your union records dues rather than wages paid?

If the amounts shown on your union records are dues rather than wages paid, the information should show whether:

- A. The dues are fixed or based on wages actually paid to you; and
- B. Any charges not related to wages are also included in the dues figure.

1729.3. Are the amounts on your union records total wages?

If the amounts shown on your union records are total wages, the evidence should show whether:

- A. They are the actual wages paid; or
- B. They were figured by using the prevailing union rate of pay.

1730. Do certified copies of your State or Federal tax returns constitute evidence of wages?

You may use certified copies of your State or Federal Income Tax Returns as evidence of wages if they show the actual wages paid to you. You can obtain certified copies of your Federal income tax returns from IRS for a small fee. You may use **uncertified copies** of State or Federal income tax returns only if you cannot obtain a certified copy.

1731. Do findings by State unemployment compensation agencies constitute evidence of wages?

Findings by State Unemployment Compensation Agencies based on evidence other than your employer's records may be used as evidence if they are based on evidence that is acceptable to us. You must submit a copy or certification of the State agency's findings showing:

- A. Your employer's name;
- B. Wages paid to you; and
- C. A description of the evidence on which the finding was based.

1732. Statement by person knowing about employment.

1732.1. How do you submit statements of persons who know about your employment and wages?

Persons who know about your employment and wages should make their statements on a Form SSA-795 (*Statement of Claimant or Other Person*), available at all Social Security offices. The statements must:

- A. Set out the facts on which the person bases his or her conclusions about the wages paid to you; and
- B. Show the periods for which the wages were paid.

1732.2. Who qualifies as a person who knows about your employment and wage?

Sources for statements include your:

- A. Supervisors;
- B. Fellow employees;
- C. Banks, or others who regularly cashed you pay checks;
- D. Employment agencies; and
- E. Union officials.

1733. Personal records of worker.

1733.1. Do your personal records constitute evidence of wages?

Your personal records showing wages paid to you are not of high investigative probative value. However, regular, complete, and genuine records may be used to support other types of evidence.

1733.2. What information do you submit with your personal records?

You must provide a statement along with your personal records showing:

- A. Who made the entries;
- B. When the entries were made;
- C. The basis for the entries;
- D. What happened to any wage statements that were given to you by your employer; and
- E. An explanation of all discrepancies and inaccuracies in the records.

1734. Can wages be credited to your record even if you cannot obtain any evidence of wages?

If you cannot obtain evidence of wages, we may accept your statement as to the amount of wages and credit your earnings record if all of the following conditions are met:

- A. The year in question is 1978 or later;
- B. Only one year is involved in the allegation;
- C. The year in question is not the current year or the year immediately preceding the current year, i.e., the “lag” year;
- D. There are postings from the same employer in the year immediately before and/or after the year in question;
- E. The amount of earnings alleged is consistent with the earnings posted both prior to and after the year in question;

- F. All attempts to obtain any other evidence have been exhausted;
- G. No contradictory evidence exists; and
- H. In claims cases, the missing wage amount affects insured status or the benefit amount.

1735. How does IRS help gather evidence?

If you do not have a copy of the Form 1040, Schedule SE, Schedule C, or Schedule F and we need the form(s) to establish the amount of self-employment income, we may ask IRS to furnish the information in its files. Normally, we request the information from IRS. If IRS cannot find the return but you know one was filed, you may complete and sign a written request asking IRS to furnish a statement of the amount of self-employment income for the year in question. You must give IRS complete identifying information, place of filing, etc. so that they can find your tax return.

1736. Are you a self-employed partner?

If you are self-employed and a partner in a business, you may need to submit Form 1065 (*Partnership Return*). We may need to know whether your share of the partnership income contains any income that is not included in earnings from self-employment (such as capital gains, rent, etc.).

CHAPTER 18

REDUCTION OR NONPAYMENT OF SOCIAL SECURITY BENEFITS

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1800. Are there conditions where your benefits are not payable?

There are certain conditions under which your retirement, auxiliary, survivors, and disability benefits are not payable or are payable only in part. This is true even if you meet all of the “entitlement” requirements. You may do things (or fail to do things) that require us to withhold all or some part of your benefits. For example, if you are entitled to retirement insurance benefits and you work, we may make deductions from your benefits and from others entitled to benefits on your record.

The chart in §1802.3 summarizes the events that may require withholding of part or all of the various types of benefits.

1801. The earnings test.

1801.1. How is your amount of benefits generally determined?

Social Security benefits are meant to partly replace earnings you (or your family) lose because of retirement, disability, or death. Therefore, the amount of Social Security benefits you receive each year depends on whether you are fully or partially retired.

1801.2. What is the “earnings test”?

We use the “earnings test,” also referred to as the retirement test, to:

- A. Measure the extent of your retirement;
- B. Determine the amount, if any, to be deducted from monthly benefits; and
- C. Measure the work activity of other individuals entitled to benefits on your record and the amount of benefits payable to them.

1801.3. What beneficiaries are not subject to the earnings test?

The earnings test does not apply to you if you are:

- A. Entitled to benefits because of a disability; or
- B. Living outside the U.S. and your work is not covered by Social Security. In this case, the “foreign work test” applies as described in §1823.

1802. Excess earnings defined.

1802.1. What are “excess earnings”?

“Excess earnings” are your earnings that exceed the annual exempt amount. (See §1803).

1802.2. How do excess earnings affect your benefit amount?

If you are younger than age 65, your excess earnings are subject to a \$1 deduction from benefits for each \$2 you earn. In the year you reach age 65, you are subject to a different annual exempt amount, and your excess earnings are subject to a \$1 deduction from benefits for each \$3 you earn.

1802.3. What events require withholding of part or all of your benefits?

Awaiting clarification...

1803. Annual exempt amounts.

1803.1. How is the annual exempt amount determined?

There is an annual exempt amount if you are age 62 through 64. In the year you reach age 65, you are subject to a different annual exempt amount. The exempt amounts also vary from year to year according to increases in the nationwide earnings level. In 1996, Congress passed a law that gradually increases the annual exempt amount for the year you reach age 65 to \$30,000 in the year 2002. The exempt amount for beneficiaries age 62 through 64 continues to be computed each year according to the formula provided in the Social Security Act. This formula takes into account an increase in national earnings levels.

1803.2. What are the annual exempt amounts?

The chart below shows the annual exempt amounts for the years 1985 through 2002:

Annual Exempt Amounts

Year	Year of Attainment of Age 65	Age 62 Through 64
1985	\$7,320	\$5,400
1986	\$7,800	\$5,760
1987	\$8,160	\$6,000
1988	\$8,400	\$6,120
1989	\$8,880	\$6,480
1990	\$9,360	\$6,840

Year	Year of Attainment of Age 65	Age 62 Through 64
1991	\$9,720	\$7,080
1992	\$10,200	\$7,440
1993	\$10,560	\$7,680
1994	\$11,160	\$8,040
1995	\$11,280	\$8,160
1996	\$12,500	\$8,280
1997	\$13,500	\$8,640
1998	\$14,500	\$9,120
1999	\$15,500	\$9,600
2000	\$17,000	\$10,080
2001	\$25,000	\$10,680
2002	\$30,000	To Be Determined

1803.3. How do you know which test to apply?

When you turn age 65 in a year determines which test you apply. The modified test applies if you turn 65 on or before the last day of the taxable year involved. The age 62 through 64 test applies if you do not turn 65 on or before the last day of the taxable year.

Dr. James, who reports his earnings on a calendar year basis, turns age 65 on January 18, 2000. The age 62 through 64 test (\$9,600) applies for calendar year 1999, and the modified test (\$17,000) applies for calendar year 2000.

(See §1808.2 for test used when a beneficiary dies in the year of turning 65.)

1804. How excess earnings are charged against benefits.

1804.1. When are excess earnings charged against your benefits?

When you have excess earnings, these earnings are charged against and deducted from your benefits. The deductions begin with the first chargeable month of the taxable year and continue each month until all excess earnings have been charged.

(See §1805 for months to which earnings cannot be charged.)

1804.2. How do excess earnings affect family insurance benefits?

If you receive retirement insurance benefits, the total monthly family benefit is charged against it. This reduces the total family benefit. The family benefit includes all monthly benefits (other than disability insurance benefits) payable to you and anyone else (e.g., spouse or child) entitled to benefits on your earnings record. It also includes benefits payable to your spouse on any earnings record as a disabled child, a mother, or a father.

Note: Your excess earnings do not cause deductions from the benefits of an entitled divorced spouse who has been divorced from you for at least two years in a row.

Mr. Bond is entitled to a retirement insurance benefit of \$378. His wife and child are each entitled to an auxiliary benefit of \$160. Mr. Bond worked and had excess earnings of \$2,094. These earnings are charged against the total monthly family benefit of \$698 (\$378 plus (2 x \$160)). Therefore, no benefits are payable to the family for January through March (3 x \$698 = \$2,094).

1804.3. How do excess earnings of someone entitled to benefits on your record affect benefits?

If a survivor or other person entitled to benefits on your Social Security record has excess earnings, only his or her monthly benefit amount is charged and deducted.

Same facts as the example in (1804.2) above, except it was the wife who worked. Her excess earnings were \$800, which are charged only against her own monthly benefit of \$160. She therefore receives no payments for January through May (5 x \$160 = \$800).

1804.4. How are your benefits affected if you and someone entitled to benefits on your record have excess earnings?

If you and a person entitled to benefits on your earnings record (auxiliary) both have excess earnings:

- A. First, your excess earnings are charged against the total monthly family benefit; and
- B. Next, the auxiliary's excess earnings are charged against his or her own benefits. However, they are only charged to the extent that those benefits have not already been charged with your excess earnings.

Mrs. Malcolm is entitled to a retirement insurance benefit of \$346, and her husband is entitled to a spouse's insurance benefit of \$173. Mrs.

Malcolm had excess earnings of \$2,076. Her husband had excess earnings of \$865.

Mrs. Malcolm's earnings are charged against the total monthly family benefit of \$519 (\$346 plus \$173), so neither Mrs. Malcolm nor her husband receives payments for January through April (4 x \$519 = \$2,076). The husband's excess earnings are charged only against his own benefit of \$173. Since his benefits for January through April were charged with the worker's excess earnings, the charging of his own earnings cannot begin until May; therefore, he receives no benefits for May through September (5 x \$173 = 865).

1805. When are you NOT charged for excess earnings?

Your excess earnings are not charged against your benefits for any month in which you:

- A. Were not entitled to benefits;
- B. Were age 65 or over in any part of the month;
- C. Met the following conditions:
 - 1. You were in a "grace year;"
 - 2. You did not work for wages of more than the monthly exempt amount; and
 - 3. You did not perform substantial services in self-employment (see §1807);
- D. Were entitled to a disability insurance or a childhood disability benefit;
- E. Were entitled to a widow(er)'s or surviving divorced spouse's insurance benefit because of a disability;
- F. Were entitled to a wife's, husband's, mother's, or father's insurance benefit, but were subject to a deduction because you did not have the spouse's (or former spouse's) child in care (see §1829);
- G. Were subject to a deduction because of your own non-covered work for pay outside the U.S.;
- H. Were subject to a deduction because the worker on whose earnings record you are entitled to benefits performed non-covered work for pay outside the U.S. (see §1823);
- I. Were subject to a deduction because the worker on whose earnings record you are entitled to benefits refused to accept vocational rehabilitation services (see §1834);
- J. Did not receive payment because periodic workers' compensation benefits prevented such payment (see §1835); or

Note: Excess earnings of a retirement insurance beneficiary are not charged against the benefits of person entitled to benefits on the worker's earnings record (the auxiliary) for any month in which the auxiliary is subject to a deduction under (D), (E), or (F) above.

K. Were entitled to student benefits based on full-time attendance at a post-secondary school and did not receive benefits for the summer months.

1806. Payment of partial benefit.

1806.1. When do you receive a partial monthly benefit because of your excess earnings?

You may receive a partial monthly benefit when your excess earnings remaining to be charged for the year are less than the amount of your total benefit for the next month subject to charging.

1806.2. When is the partial monthly benefit paid?

The partial payment is paid only at the close of the taxable year when you file your annual report of earnings (see §1814), unless otherwise requested. Where the partial monthly benefit is not a multiple of \$1, the monthly benefit amount is rounded to the next lower multiple of \$1. (See the example in (1806.3.) below.)

1806.3. What is the partial monthly benefit amount if there is only one beneficiary involved?

If you are the only beneficiary involved, the partial benefit paid is the difference between the monthly benefit amount and the excess earnings charged to the month.

Ms. Ridgely has a monthly benefit amount of \$288.20. She had excess earnings of \$700 that are charged against her benefits beginning with January. This results in the loss of her entire benefit for January and February plus \$123.60 of the March payment ($(2 \times \$288.20) + \$123.60 = \$700$). She receives a partial monthly benefit of \$164.00 for March ($\$288.20 - \$123.60 = \164.60 rounded to the next lower multiple of \$1).

1806.4. What is the partial monthly benefit amount if there is more than one beneficiary involved?

Where excess earnings are charged against the family benefits of a retirement insurance beneficiary and one or more person entitled to benefits on the worker's earnings record, the partial benefit is allocated to each person entitled to benefits. The partial benefit is allocated in the proportion to the "original entitlement rate" of beneficiary on the worker's earnings record. However, a beneficiary's prorated share of the partial benefit may not be more than the benefit amount that would have been paid if there were no work deductions.

1806.5. What is the “original entitlement rate”?

The “original entitlement rate” means the respective benefit rate as figured without:

- A. Adjustment for the family maximum;
- B. Adjustment for entitlement before age 65; and
- C. Any reduction because of an auxiliary's entitlement to a retirement or disability insurance benefit.

Mr. Star, his wife, and two children are entitled to benefits. After charging Mr. Star's excess earnings against the total monthly family benefit, a partial benefit of \$100 is payable to the family. The chart below shows the amount each family member will receive.

Family Member	Original Benefit Amounts	Proportionate Part of Original Benefit	Actual Benefits Under Family Maximum	Prorated Share of Partial Benefit
Mr. Star	\$194.00	(2/5)	\$194.00	\$ 40 (2/5 x 100)
Wife	97.00	(1/5)	32.40	20 (1/5 x 100)
Child	97.00	(1/5)	32.40	20 (1/5 x 100)
Child	97.00	(1/5)	32.40	20 (1/5 x 100)
Total	\$485.00	-	\$291.20	\$100

1807. Grace year and non-service month defined.

1807.1. What is a “grace year”?

A “grace year” is a year you receive your full benefit amount for any non-service month, regardless of the amount that your earnings exceed the annual exempt amount.

1807.2. What is a “non-service” month?

A “non-service month” is a month you do not:

- A. Perform substantial services in self-employment; and

B. Do not have earnings from employment that are more than the monthly exempt amount.

1807.3. When are you entitled to a grace year?

You are entitled to a grace year under the following circumstances:

- A. The first year you have at least one non-service month is a grace year;
- B. If you are entitled to one type of benefit (e.g., mother's) and then have a break in entitlement of at least one month before becoming entitled to a different type of benefit (e.g., widow's): the first year you are entitled to the second benefit in which you have at least one non-service month is a grace year.
- C. If you are entitled to benefits as a child, a young wife or husband with a child in care, a mother or a father: the year that your entitlement ends is an additional grace year, unless entitlement ends:
 - 1. Because of death; or
 - 2. Because you are entitled to another type of benefit with no break in entitlement.

1807.4. How is “substantial services” determined for a self-employed beneficiary?

We determine whether you, as a self-employed beneficiary, perform “substantial services” by the actual service you perform, not by the amount of profit or loss. The test is whether you can reasonably be considered retired in a particular month. In applying this test, we consider the following factors:

- A. The amount of time you devote to the trade or business. Generally, services of 45 hours or less in a month are not considered substantial. However, as few as 15 hours of service a month could be substantial if, for example, the hours:
 - 1. Involved management of a sizeable business; or
 - 2. Were spent in a highly skilled occupation.

Note: Services of less than 15 hours a month are never considered substantial.

- B. The nature of the services;
- C. The relationship of the activities performed before retirement to those performed after retirement; and
- D. Other circumstances, such as:
 - 1. The amount of capital you invested in the business;
 - 2. The type of business establishment;

3. The presence of a paid manager, partner, or family member who manages the business; and
4. The seasonal nature of the business.

1807.5. What are the monthly exempt amounts?

The monthly exempt amounts that apply to earnings from employment for years 1985 through 2002 are listed in the chart below.

Monthly Exempt Amounts

Year	Year of Attainment of Age 65	Age 62 Through 64
1985	\$610	\$450
1986	\$650	\$480
1987	\$680	\$500
1988	\$700	\$510
1989	\$740	\$540
1990	\$780	\$570
1991	\$810	\$590
1992	\$850	\$620
1993	\$880	\$640
1994	\$930	\$670
1995	\$940	\$680
1996	\$1042	\$690
1997	\$1125	\$720
1998	\$1209	\$760
1999	\$1292	\$800
2000	\$1417	\$840
2001	\$2084	\$890
2002	\$2500	To Be Determined

1807.6. What is your benefit amount when the monthly earnings test applies?

When the monthly earnings test applies, regardless of the amount of annual earnings, you receive full benefits for any month that:

- A. Your earnings do not exceed the monthly exempt amount; and
- B. You do not perform substantial services in self-employment.

Note: Earnings for the entire year, i.e., January through December, are always used to determine the maximum amount we withhold from benefits if you are under age 65. However, the monthly test prevents us from withholding benefits for months that meet the above rules.

1808. Annual exempt amounts for short taxable years.

1808.1. When does a short taxable year occur?

A short taxable year is a taxable year of less than 12 months. It may occur when an individual:

- A. Dies before November 11, 1988; or
- B. Changes from one taxable year to another, usually from a calendar to a fiscal year or from one fiscal year to another.

Congress eliminated the short taxable year for deaths that occur on or after November 11, 1988. The number of months in such taxable year of death is 12.

1808.2. How is the exempt amount computed for a short taxable year?

The exempt amount for a short taxable year is figured by multiplying the monthly exempt amount by the number of months in the short taxable year. The monthly exempt amounts in §1807.5 are used to compute the exempt amounts for a short taxable year.

If a beneficiary dies in any month of the taxable year that he or she would have attained age 65, the age 65 exempt amount is used.

Miss Rose's date of birth is August 29, 1935. She is on a calendar taxable year and died on October 15, 2000. Her exempt amount is thus \$17,000, the exempt amount for the year of attainment of age 65 for 1995. If 2000 is her initial grace year, the monthly exempt amount of \$1,417 for the year of attainment of age 65 is used in determining non-service months.

Dr. Carey's date of birth is December 2, 1935. He is on a calendar taxable year and died on October 26, 2000. Although he had not turned 65 by October 1997, his exempt amount is \$17,000, the exempt amount for the year of attainment of age 65 for 2000.

1809. Total earnings for earnings test purposes.

1809.1. How do you compute your total earnings?

Under the earnings test, your earnings for a taxable year consist of:

- A. The sum of your wages for services performed in the year; **plus**
- B. All net earnings from self-employment for the year; **minus**
- C. Any net loss from self-employment for the year.

Note: If you are self-employed, a pro rata share of your net earnings or net loss for the taxable year is used to determine earnings for the period before turning age 65.

1809.2. Are earnings counted even if you were not entitled to benefits for the entire year?

Yes, we count your earnings for the entire taxable year in applying the earnings test. This is true even if you may not have been entitled to benefits for the entire year.

1809.3. Are earnings counted when you turn 65?

No, we do not count your earnings if they were earned in or after the month you turned age 65.

1810. When are wages and net earnings from self-employment counted?

For earnings test purposes, we count wages as earnings for the taxable year in which they are earned, regardless of when they are paid. We generally count net earnings from self-employment as earnings for the taxable year in which they are received, regardless of when they are earned. (However, note the exclusion in §1812(B).)

1811. What types of income count under the earnings test?

The following types of earnings count for earnings test purposes:

- A. All wages for employment covered by Social Security (see Chapter 13);
- B. All cash pay (even if not considered as “wages” under the cash-pay test explained in §901 and §1303) for:
 - 1. Agricultural work;
 - 2. Domestic work in a private home; and
 - 3. Service not in the course of the employer's trade or business;
- C. All pay, cash and non-cash, for work as a homemaker or for a nonprofit organization whether or not the \$100 per year test is met (see §931);
- D. Cash tips that equal or exceed \$20 a month (see §1329);

- E. All pay for work not covered by Social Security, if the work is done in the U.S., including pay for:
 - 1. Family employment;
 - 2. Work by students, student nurses, interns, newspaper and magazine vendors;
 - 3. Work for Federal or State or foreign governments or instrumentalities; and
 - 4. Work covered by the Railroad Retirement Act; and
- F. All net earnings from self-employment.

1812. What types of income do NOT count under the earnings test?

The following types of earnings income (or losses) do not count as earnings from employment or self-employment under the earnings test:

- A. Any income from employment or self-employment earned in or after the month the individual turns age 65;
- B. Any income from self-employment received in a taxable year after the year the individual becomes entitled to benefits. Such income must be because of significant services performed after the first month of entitlement to benefits;
Note: This income is excluded from gross income only for purposes of the earnings test.
- C. Damages, attorneys' fees, interest, or penalties paid under court judgment or by compromise settlement with the employer based on a wage claim;
Note: Any back pay recovered in a wage claim does count for the earnings test.
- D. Payments to secure release of an unexpired contract of employment;
- E. Certain payments made under a plan or system established for making payments because of the employee's sickness or accident disability, medical or hospitalization expenses, or death (see §1311);
- F. Payments from certain trust funds that are exempt from income tax (see §1314);
- G. Payments from certain annuity plans that are exempt from income tax (see §1316);
- H. Pensions and retirement pay;
- I. Sick pay if paid more than six months after the month the employee last worked;

- J. Payments-in-kind for domestic service in the employer's private home for:
 - 1. Agricultural labor;
 - 2. Work not in the course of the employer's trade or business; or
 - 3. The value of meals and lodging furnished under certain conditions;
- K. Rentals from real estate that cannot be counted in earnings from self-employment. For instance, the beneficiary did not materially participate in production work on the farm, the beneficiary was not a real estate dealer, etc.;
- L. Interest and dividends from stocks and bonds (unless they are received by a dealer in securities in the course of business);
- M. Gain or loss from the sale of capital assets, or sale, exchange, or conversion of other property that is not stock in trade nor considered inventory;
- N. Net operating loss carry-over resulting from self-employment activities;
- O. Loans received by employees unless the employees repay the loans by their work;
- P. Workers' compensation and unemployment compensation benefits;
- Q. Veterans' training pay;
- R. Pay for jury duty;
- S. Prize winnings from contests, unless the person enters contests as a trade or business;
- T. Tips paid to an employee that are less than \$20 a month or are not paid in cash (see §1329);
- U. Payments by an employer that are reimbursement specifically for travel expenses of the employee and are so identified by the employer at the time of payment;
- V. Payments to an employee as reimbursement or allowance for moving expenses, if they are not counted as wages for Social Security purposes (see §1333);
- W. Royalties received in or after the year a person turns age 65. The royalties must flow from property created by the person's own personal efforts that he or she copyrighted or patented before the taxable year in which he or she turned 65;
Note: These royalties are excluded from gross income from self-employment only for purposes of the earnings test.

- X. Retirement payments received by a retired partner from a partnership provided certain conditions are met (see §1203);
- Y. Certain payments or series of payments paid by an employer to an employee or an employee's dependents on or after the employment relationship has ended due to:
 - 1. Death;
 - 2. Retirement for disability; or
 - 3. Retirement for age.

The payments are made under a plan established by the employer (see §1319); and

- Z. Payments from Individual Retirement Accounts (IRA's) and Keogh Plans (see §1338).

1813. Does the recipient of income determine whether the earnings count under the earnings test?

It does not matter who the final recipient of your income is when applying the earnings test. If the income is actual wages for services you perform or net earnings from self-employment, you must include the income when applying the earnings test. It also does not matter what you call your earnings: "dividends," "rent," "refund of loans," etc. We look closely at arrangements of this nature.

Mr. Smith continues to perform services for a family, close corporation, trade, or business owned by him. Mr. Smith later transfers ownership to a relative. If Mr. Smith is receiving income, directly or indirectly, that is wages for the services or net earnings from self-employment, he must include that income in applying the earnings test.

1814. Annual report of earnings.

1814.1. Who must file an annual report of earnings?

You must file an annual report of earnings if you are:

- A. A Social Security beneficiary (unless you are entitled to benefits because you are disabled); or
- B. Receiving benefits on a beneficiary's behalf, if the beneficiary:
 - 1. Was entitled to Social Security benefits for the taxable year;
 - 2. Had not turned age 65 in or before the first month of entitlement in that year;
 - 3. Had total earnings (wages and net earnings from self-employment) more than the yearly exempt amount; and
 - 4. Did not have all benefits withheld in the year for all entitlement months in which he or she was under age 65.

1814.2. Who is NOT required to file an annual report of earnings?

You do not have to file an annual report for a taxable year that you (or the beneficiary on whose behalf you are receiving benefits) were not paid any benefits because of work and high earnings.

1814.3. What happens if you are required to file an annual report and you fail to do so?

If you do not file an annual report or other information showing that benefits are payable for that year, benefits that might otherwise have been payable may not be paid after three years, three months and 15 days after the close of the taxable year. Be sure to file your report within the time limit in §1815.

1814.4. What type of information qualifies as an annual report?

In 1997, we changed our rules so that, for reports due on or after April 15, 1997, we may accept the W-2 information reported by your employer. If you are self-employed, the self-employment tax information you file with the IRS is acceptable. We use the information in those reports along with other pertinent information on our records to adjust your benefits under the earnings test.

You may still report your earnings to us if you want to have your benefits adjusted sooner. Otherwise, we will adjust benefits based on the earnings posted to your record.

1814.5. Who is responsible for the accuracy of the amount of earnings posted to your record?

We notify you of the amount of earnings used to adjust your benefits. However, you have the primary responsibility to ensure that the adjustment to your benefits was based on the correct amount of earnings. Be sure to notify us promptly if the earnings used were not correct for deduction purposes.

1815. When is the annual report of earnings due?

You must file the annual report of earnings on or before the 15th day of the fourth month following the end of your taxable year. If you use a calendar year, your annual report of earnings is due April 15. We assume your taxable year is a calendar year until you show us that you have a different taxable year.

If the due date falls on a Saturday, Sunday, legal holiday, or other non-work day for Federal employees set by statute or Executive Order, it is extended to the first full work day after the original deadline.

1816. Extension of time for filing annual report of earnings.

1816.1. Can you get an extension for filing your annual report of earnings?

We may grant an extension of time for filing your annual report of earnings if there is a valid reason. You (or someone acting on your behalf) must make a written request for an extension before your annual report is due.

1816.2. What are examples of valid reasons for getting an extension?

A valid reason is a real need, problem, or situation that makes it impossible or difficult for you to file your annual report by the regular due date. A valid reason may be:

- A. Illness or disability;
- B. Absence or travel so far from home that you do not have and cannot readily obtain records needed to file your report;
- C. Inability to get evidence you need from another source;
- D. Inability of an accountant to compile the data needed for your report; or
- E. Any similar situation that has a direct bearing on your obligation to file your annual report.

1816.3. What happens if you are granted an extension?

If we grant your request for an extension, we will set a new due date for your annual report. You will receive a written notice of the approved extended reporting date. If you need another extension, you must make your request before the due date of your new approved reporting date.

1816.4. What is the maximum amount of time you can receive for an extension?

More than one extension may be granted in a taxable year. However, the total amount of time of all extensions granted for any one taxable year cannot be more than four months. This is so you avoid a penalty (see §1820) for late reporting when you know your annual report will be unavoidably late.

1817. How do you request an extension of time for filing your annual report?

If you believe that you have a valid reason for an extension, file a request with a Social Security office before your annual report is due. The request must be in writing and must:

- A. Clearly identify you (or the beneficiary, if you are filing on his or her behalf) by name and claim number;
- B. Establish the year that your annual report is due;
- C. State the reason you need the extension;
- D. State the amount of additional time you need;
- E. Show the date you are making the request;
- F. Be signed by you (or the person requesting the extension on your behalf); and
- G. If you are making the request on behalf of a beneficiary, show the beneficiary's authorization or include a statement by you giving the basis for your authority.

Note: For reports due on or after April 15, 1997, we consider all adjustments based on posted earnings to be based on a timely filed report. (See Section §1814.) However, beneficiaries requesting an extension of time for filing a self-employment tax return with IRS should also request an extension of time for filing the annual report with us.

1818. The annual report form.

1818.1. How do you file an annual report?

File your annual report regarding your earnings for the taxable year by written statement or telephone. This statement is acceptable if you give enough information.

1818.2. What information do you need for your annual report?

The following summarizes the information you need for your annual report:

- A. Your total amount of wages (before payroll deductions) earned during the taxable year for which the report is being made;
- B. Your total net earnings or net loss from self-employment for the taxable year;
- C. Months during a grace year (see §1807) in which you did not earn over the monthly exempt amount as an employee and did not perform substantial services in self-employment; and
- D. An estimate of your expected total earnings (wages and net earnings from self-employment) for the next taxable year.

1819. Delay in filing annual report.

1819.1. Under what conditions does the late filing of your annual report result in a reduction of benefits?

There may be a penalty deduction (see §1820) in your benefits if you fail to file your annual report of earnings in a timely manner, if all of the following factors exist:

- A. You did not make an annual report of earnings within three months and 15 days after the close of the taxable year;
- B. We cannot find good cause for your not reporting on time (see §1832);
- C. A work deduction (part or all of one month's benefit) is required because of your earnings; and
- D. You received and accepted a benefit check for one or more months during that taxable year.

1819.2. If you do not file your annual report on time, what benefit payments are withheld?

If you fail to file your annual report on time, you will not receive:

- A. Any benefit payments withheld due to your failure to file an annual report on time; and
- B. Any monthly benefit payments that must be withheld because of your excess earnings in the year the annual report was due.

Note: See sections §1814 and §1819 above. For reports due on or after April 15, 1997, we accept the information on the W-2 forms and the SE tax return to be the annual report of earnings required by law. We assume that all adjustments to benefits were based on a report filed on time. No penalty is imposed unless you knowingly and intentionally attempted to hide your earnings from us in an effort to avoid the payment of taxes and/or to avoid deductions under the earnings test.

1820. Number of additional benefits lost for failure to report on time.

1820.1. What is the penalty deduction amount for failing to file the annual report on time?

The penalty deduction that may be imposed due to your failure to file the annual report of earnings on time is as follows:

- A. **For the first time you fail to file the report**, the amount of the penalty is equal to your monthly benefit rate for the last month you are entitled in the taxable year. However, if the work deduction is less than your full benefit for the month, the amount of the penalty equals the amount of the work deduction, but not less than \$10;

- B. **For the second time you fail to file the report**, the amount of the penalty is two times your monthly benefit rate; and
- C. **For the third and any subsequent time you fail to file the report**, the amount of the penalty is three times your monthly benefit rate.

1820.2. Is there a maximum number of months that can be imposed for the penalty?

The number of months imposed for the penalty cannot be more than the number of months that work deductions are imposed for the year. The amount of the penalty is the same no matter how long you delay filing each report, whether for one month or one year after the due date.

A beneficiary with a monthly benefit rate of \$136 has excess earnings of \$190 for that year. This requires a loss of benefits in two months. Therefore, the maximum amount of the penalty is \$272 (two times the monthly benefit rate) even if that year may have been the third year that the beneficiary failed to file the annual report on time.

1821. Are benefits of those entitled to benefits on your earnings record affected when you do not file your annual report on time?

Benefits of your spouse or child are not affected if a penalty is imposed on you for failing to submit your annual report of earnings on time. However, their benefits are affected for any month you lose part or all of your benefit because of excess earnings.

1822. Report of expected earnings also required.

1822.1. When do you need to file a report of expected earnings?

If you go to work and expect that your total earnings will be more than the yearly exempt amount (see §1803), you should file a report of expected earnings. This report prevents payment of monthly benefits to you that may have to be returned at the end of the year if, under the earnings test, you were not due all the payments received.

When you file your expected earnings report, you are encouraged to make a high estimate of earnings for the year. Based on your report, we suspend benefits for the number of months required by your estimate.

1822.2. How is your earnings report validated at the end of the year?

At the end of the taxable year, we figure the amount of benefit payments due for that taxable year. If all payments that were due have not been made, you are paid whatever amount we find that is due to

you. If, on the other hand, you have been paid too much, we either withhold the amounts from future benefits payable, or you must refund the amount. (See Chapter 19.)

1823. The foreign work test.

1823.1. What is the “foreign work test”?

The “foreign work test” is a separate retirement test that applies to beneficiaries (other than those entitled because of disability) who work in employment or self-employment outside the U.S. that is not covered by the U.S. Social Security system. This test is based only on the amount of time during which the beneficiary is employed or self-employed. It is not based on the amount of the beneficiary's earnings or losses. The foreign work test was intended to make it unnecessary to convert earnings in a foreign currency into earnings in specific dollar amounts.

1823.2. When are benefits withheld under the foreign work test?

Under the foreign work test, your monthly benefit is withheld for each calendar month that you (or a person entitled to benefits on your record) work:

- A. Outside the U.S.;
- B. In work for pay not covered by Social Security; and
- C. For more than 45 hours.

1823.3. Are benefits withheld if you are over age 70 and you work?

No. If you are at least age 70, we do not withhold benefits for any month you work.

1823.4. Are family benefits withheld if a retirement insurance beneficiary loses benefits?

If you are a retirement insurance beneficiary and you work and lose benefits for one or more months, family benefits are also withheld for the same months. (See the exception below.) Family benefits include:

- A. Benefits payable to auxiliaries (spouse or child) on your earnings record; and
- B. Benefits payable to your spouse on any earnings record as a disabled child, mother, or father.

Note: The benefits of a divorced spouse, who has been divorced at least two years, are not subject to withholding because of the retirement insurance beneficiary's work.

1823.5. How does work activity of someone entitled to benefits on your record affect benefits?

The work activity of your spouse, child, or survivor beneficiary affects only his or her own benefits.

1824. What is considered work “outside of the U.S.”?

We consider your work “outside of the U.S.” if your work takes place outside the territorial boundaries of the 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. However, the law specifically provides that self-employment by nonresident aliens in Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands is considered to be outside the U.S. unless the alien is a resident of a State, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.

1825. Non-covered work for pay defined.

1825.1. What is “non-covered work for pay”?

You are performing “non-covered work for pay” if:

- A. You are employed outside the U.S. in a job not covered by U.S. Social Security (see Chapter 9); or
- B. You are self-employed outside the U.S. in a trade or business and your income is not subject to the U.S. Social Security tax.

1825.2. Is income excluded from net earnings considered non-covered work for pay?

A trade or business that produces only income that would be excluded from net earnings if carried on in the U.S. (e.g., dividends, rentals from real estate, etc.) is not “non-covered work for pay.” Neither the foreign work test nor the earnings test applies to such income.

1826. Determining number of hours a retirement beneficiary works per month.

1826.1. How do you count the number of hours you work each month?

To determine the number of hours you work each month, count each hour you are engaged in employment or self-employment.

1826.2. How do you know if you are engaged in employment or self-employment?

You are engaged in employment or self-employment when you:

- A. Actually perform services as an employee or self-employed person;

- B. Have an employment agreement to work even though you may not perform actual services because of sickness, vacation, etc.;
- C. Are the owner or part owner of a functioning trade or business; or
- D. Hold yourself out to the public as carrying on a trade or business, whether or not you perform actual services.

1827. Do you need to report your work activity performed outside the U.S.?

If you are under age 70, you must file a report with us if you become employed or self-employed outside the U.S. You must file the report before you accept benefits for the second month following the month in which you worked.

1828. What is the penalty for your failure to report foreign work?

If you fail to report foreign work activity within the time limit, penalty deductions may be imposed as follows:

- A. **For the first time you fail to file the report**, a penalty of one month's benefit is withheld, even if you may have worked several months before we discovered your failure to report;
- B. **For the second time you fail to file the report**, a penalty of two months' benefits may be imposed; and
- C. **For the third and subsequent times you fail to file the report**, three additional months' benefits may be withheld.

The above penalties are imposed in addition to the monthly benefits you lose because of the application of the foreign work test. We cannot impose any more penalty deductions than the number of months for which foreign work deductions were required for that year.

1829. Child in care requirement.

1829.1. What types of beneficiaries must have a child in care to receive benefits?

The following types of beneficiaries must have in care a child entitled to benefits in order to receive monthly benefits:

- A. A spouse under age 62;
- B. A mother or father; or
- C. A surviving divorced mother or father.

The child in care must be under age 16 (or disabled, if age 16 or over). Benefits are not payable for any month in which the child is not in the parent's care, or the child is age 16 or over and not disabled.

1829.2. Are beneficiary benefits reduced if there is a child in care?

The amount of the benefit payable to a spouse or divorced spouse is not reduced for any month he or she has a child in care, unless the spouse/divorced spouse has excess earnings. Similarly, the amount of the benefit payable to a widow(er), surviving divorced spouse, or disabled widow(er) is not reduced below 75 percent of the primary insurance amount of the deceased worker in any month he or she has such a child in care (unless reduction for the family maximum or excess earnings is required).

(For the definition of “in care,” see §§312-319.)

1829.3. What must be the relationship of the child to the worker?

The child entitled to benefits must be the worker's child; e.g., the natural child, stepchild, or adopted child:

- A. **Where a wife or husband** is concerned, the child must be entitled to benefits on the same worker's Social Security earnings record;
- B. **Where a surviving divorced mother or father** is concerned:
 - 1. The child must his or her natural or legally adopted child; and
 - 2. The child's insurance benefit must be payable on the same worker's Social Security earnings record; or
- C. **Where a divorced spouse, a widow(er), a surviving divorced spouse, a mother, or a father** is concerned, the child may be entitled to child's benefits on any Social Security record.

1830. Are benefits paid if the child in care refuses vocational rehabilitation?

No benefit is paid to the beneficiaries listed in §1829 for any period:

- A. The only child in care is entitled to benefits as a disabled child age 18 or over; and
- B. Monthly benefits are not payable to the child because of the child's refusal of vocational rehabilitation (see §1834).

1831. Reporting failure to have a child in care.

1831.1. Is it required to report to SSA if there is no longer a child in care?

If you have rights to benefits based on having a child in care, you must report to us if you no longer have a child in your care. The mother or father must report this fact before receiving and accepting benefits for the second month following the month in which they first did not have the child in care.

1831.2. What is the penalty for failure to report no longer having a child in care?

The mother or father must report when there is no longer a child in care within the time limit. Failure to do so may result in the following penalties:

- A. **For the first time the mother or father fails to report**, a penalty equal to one month's benefit may be withheld;
- B. **For the second time the mother or father fails to report**, a penalty equal to two months' benefits may be withheld; and
- C. **For the third and each subsequent failure to report**, a penalty equal to three months' benefits may be withheld.

The withholding of the penalty for failure to report is in addition to the withholding of benefits because the mother or father did not have a child in care.

We cannot impose any more penalty deductions than the number of months for which deductions for failure to have a child in care were required for that period.

1832. Do we still impose a penalty if you have good cause for your failure to report to us?

If you have good cause for failing to report an event that requires benefits to be withheld, there is no penalty deduction for the late report. (See §§1819, 1828, and 1831.)

1833. Good cause defined.

1833.1. What is "good cause" for failing to report an event?

"Good cause" for your failure to make a required report on time may exist if the failure was the result of:

- A. Unfavorable circumstances;
- B. Your confusion as to the law resulting from amendments to the Social Security Act or other legislation; or
- C. Misleading action on our part.

You must prove that your failure to report was for good cause and was not due to willful neglect. When we decide whether there is good cause, we consider the circumstances in each case.

1833.2. What are examples of good cause?

Below are examples good cause for failure to report. We consider evidence of failure to report due to:

- A. Your serious illness, or death or serious illness in your immediate family;

- B. In the case of an annual report, your inability to get earnings information from an employer within the time required to file the report because of:
1. Death or serious illness of your employer or his or her immediate family;
 2. Unavoidable absence of the employer; or
 3. Destruction by fire or other damage of the employer's records;
- C. Destruction by fire or other damage of your business records;
- D. Your timely sending of the report to another governmental agency (that caused a delay in the report reaching us), if you did so in good faith;
- E. Your lack of awareness that an annual report is required in the year you reach age 70 if earnings exceeded the yearly exempt amount;
- F. Our failure to give you the reporting forms in enough time to complete and file the report, provided you made a timely request for the forms;
- G. Your belief that an extension of time granted to you by the Internal Revenue Service for filing income tax returns also applied to the Social Security annual earnings report;
- H. Your reliance on a report to us made by (or on behalf of you) you before the close of the taxable year was adequate. You believed the report provided enough information about your work to require suspension of benefits, provided the report was not later found untrue or voided; or
- I. You had a physical, mental, educational or linguistic limitation (including any lack of familiarity with the English language) that kept you from understanding the reporting responsibilities. Therefore, you did not file a timely report.

1833.3. Is good cause established if you have the same reason for failing to file a report more than once?

Generally, good cause does not exist if you fail to file a report on time for a later period under similar circumstances under which you have been found to have good cause in the past.

1834. Refusal of vocational rehabilitation.

1834.1. What effect does your refusal to accept vocational rehabilitation services have on your benefits?

If you refuse vocational rehabilitation services without good cause, your benefits are withheld if you are entitled to benefits based on a disability. As a disability insurance beneficiary, any other benefits

payable on your earnings record are withheld as long as you continue to refuse vocational rehabilitation.

Note: This provision does not apply to a childhood disability beneficiary age 18-22 if he or she is a full-time student.

1834.2. When is there good cause for refusal to accept vocational rehabilitation services?

Your refusal to accept vocational rehabilitation services is for good cause if:

- A. You are a practicing member of a recognized religious sect; and
- B. The sect believes that its members should rely only upon prayer or other spiritual means to treat physical or mental impairments.

1835. Does the receipt of periodic workers' compensation payments affect your benefits?

Your disability insurance benefit amount, and the benefits of others entitled on your record, may be reduced if you receive:

- A. Periodic workers' compensation payments; or
- B. Certain disability benefits under Federal, State or local law. (See §505.)

1836. Receipt of a governmental pension.

1836.1. How does the receipt of a governmental pension affect benefits?

If you receive a governmental pension, certain circumstances cause an offset against your Social Security benefit. Benefits payable as a spouse, divorced spouse, surviving spouse, surviving divorced spouse, or a deemed spouse may be reduced if the person receives periodic payments based on his or her own employment in the Federal Government, State or political subdivision that was not covered under Social Security from the Federal Government, a State, or a political subdivision of a State.

1836.2. What is a "periodic payment"?

A periodic payment is a:

- A. Payment received on a monthly or other than monthly basis; or
- B. Lump-sum payment that replaces a monthly payment.

1836.3. What is a "State or political subdivision"?

For government pension purposes, a State or political subdivision includes the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

1836.4. Are there any exceptions to the governmental pension offset?

The offset is effective if you apply for Social Security benefits in or after December 1977, unless you meet one of the following exceptions:

- A. The offset does not apply for any month you:
 - 1. Were entitled to or eligible for the government pension for any month between December 1977 through November 1982; and
 - 2. Meet all the requirements for entitlement that were in effect and being administered in January 1977;
- B. The offset does not apply to benefits payable December 1982 and later if you:
 - 1. Were entitled to or eligible for the governmental pension before July 1, 1983; and
 - 2. Were receiving one-half support from the retirement or disability insurance beneficiary at the time that beneficiary either became entitled to benefits, began a period of disability, or died;
- C. You are a State or local government employee whose pension is based on work covered by Social Security on your last day of employment and your last day at work was in a position covered by the pension plan;
- D. You are a Federal employee who is covered under Social Security by law; or
- E. You are a Federal employee who chose to switch from the civil service retirement system to employment covered under Social Security on or before December 31, 1987.

1836.5. How much is the Social Security benefit reduced?

If you do not meet one of the exceptions above and you receive a governmental pension, your Social Security benefit is reduced by one of the following amounts:

- A. If you were eligible for a government pension **before July 1983**, your Social Security benefits are reduced by 100 percent of your government pension; or
- B. If you are eligible for a government pension **after June 1983**, your Social Security benefits are reduced by two-thirds the amount of your government pension.

Effective with benefits payable for December 1984 and later, the two-thirds reduction rate applies to all situations where the offset applies. This is true regardless of when you were first eligible for a government pension.

1837. Conviction for subversive activities.

1837.1. How does the conviction of subversive activities affect your benefits?

If you are convicted of subversive activities, you may lose the right to Social Security benefits if you are convicted of an offense:

- A. Under title 18 of the United States Code, chapter 37 (relating to espionage and censorship), chapter 105 (relating to sabotage), or chapter 115 (relating to treason, sedition, and subversive activities); or
- B. Under section 4 of the Internal Security Act of 1950, as amended (relating to subversive activities).

1837.2. Can additional penalties be imposed?

Upon conviction of one of these offenses, the judge may impose an additional penalty that affects your right to monthly Social Security benefits. It does not matter whether the benefit is payable on your own or on anyone else's Social Security earnings record.

1838. What earnings are disregarded when a convicted person makes a claim for benefits?

If the additional penalty is imposed and you make a claim for monthly Social Security benefits, the following earnings creditable to any Social Security record on which you have claimed benefits are ignored:

- A. All wages paid:
 - 1. For convictions prior to 1978-All wages paid in or before the calendar quarter in which you were convicted; or
 - 2. For convictions after 1977-All wages paid in or before the calendar year in which you were convicted; and
- B. All net earnings from self-employment derived in or before the taxable year in which you were convicted.

1839. Penalty applies to convicted person only.

1839.1. Does the penalty apply to others entitled to benefits on the convicted person's record?

The penalty applies only to you as the person convicted of subversive activities. It does not affect the rights of others who are entitled to benefits on your Social Security earnings record. Their benefit rights and benefit amounts are based on your earnings before and after the conviction.

1839.2. Is the right to the lump-sum death payment affected by a conviction?

Your right to the lump-sum death payment is not affected by your conviction for subversive activities. The payment may be paid to you if you are otherwise entitled to the payment. The lump-sum death payment may also be paid on the full earnings record of a worker convicted of subversive activities.

1840. How does a pardon for a previous conviction affect your benefits?

If you were previously convicted of subversive activities, a pardon removes the additional penalty affecting your Social Security benefit rights. The penalty is removed the month after the month the pardon is granted. Thereafter, your right to benefits and the benefit amount is determined as if there had been no conviction. However, the pardon has no effect on your benefit rights for the months before the pardon.

1841. Deportation or removal of retirement or disability insurance beneficiary.

1841.1. How does deportation or removal affect your benefits?

Workers deported or removed from the U.S. after September 1, 1954, cannot receive retirement or disability benefits beginning with the month after the month the Immigration and Naturalization Service notifies us of the deportation or removal. (If notification occurs before a worker's entitlement, nonpayment applies with the first month of entitlement.) For this nonpayment provision to apply:

- A. Deportation must have been ordered under section 241(a) of the Immigration and Nationality Act (INA), in effect before the INA amendments effective April 1997; or
- B. Removal must have been ordered under section 237(a) of the INA as amended effective April 1997.

Nonpayment applies until the month you are lawfully admitted to the U.S. for permanent residence after the deportation or removal.

1841.2. Are there any exceptions to the deportation provisions?

The following deportations or removals are exceptions:

- A. Deportations ordered under paragraph (3), (8), (9), (13), (1)(C) or (1)(E) of section 241(a); or
- B. Removals ordered under paragraph (1)(C) or (1)(E) of section 237(a).

1842. Effect of deportation or removal on auxiliary or survivor benefits.

1842.1. How does your deportation or removal affect benefits of others entitled on your earnings record?

Generally, other individuals entitled to benefits on your earnings record continue to receive monthly benefits if you are deported or removed. However, if they are aliens, they cannot receive benefits on your record for any month (or part of the month) they are living outside the U.S. If a person entitled to benefits on your earnings records is deported or removed (but you are not), the benefit that person receives on your record continues.

1842.2. Is the lump-sum death payment affected by deportation?

The lump-sum death payment cannot be paid on the earnings record of a worker who dies in or after the month we receive notice of deportation or removal. However, nonpayment does not apply if the worker was lawfully admitted to the U.S. for permanent residence after deportation or removal but before death.

1843. Aliens outside the U.S. for six months or more.

1843.1. If an alien lives outside the U.S. for more than six months, how are benefits affected?

If you are an alien and you live outside the U.S. (as defined in §1824) for six full calendar months in a row, you may not receive monthly benefits effective with the seventh month, unless you meet one of the exceptions listed in §1845. This rule applies if you are a retirement and disability insurance beneficiary. It also applies to those entitled to benefits on your earnings record.

1843.2. Are benefits of others entitled to benefits on your record affected if you live outside the U.S. for more than six months?

Each beneficiary is treated individually. The suspension of one beneficiary's payments does not cause suspension of payments to any other beneficiary.

1843.3. How is the lump-sum death payment affected?

No lump-sum death payment is paid on the record of a worker who dies outside the U.S. if a monthly benefit was not (or would not have been) payable for the month before the month of death because of the worker's absence from the U.S.

1843.4. Is an alien entitled to special age 72 benefits?

To be entitled to special age 72 payments, an alien must have:

- A. Been legally admitted for permanent residence in the U.S.; and
- B. Resided in the U.S. continuously for five years.

1844. Absence from the U.S.

1844.1. When does a period of absence from the U.S. begin?

If you are an alien, a period of absence from the U.S. begins with the first full (24-hour) day you are outside the U.S.

1844.2. Are benefits affected if you return within 30 days?

If you return to the U.S. before 30 full days in a row have passed, we consider your period of absence as broken. Your benefits are not affected.

Ms. Kopper leaves the U.S. on March 31 and returns on April 30. Since she is outside the U.S. for only 29 full days (April 1-April 29), her period of absence is considered broken and her benefits are not affected.

1844.3. Are benefits affected if you remain outside the U.S. for 30 days?

If you remain outside the U.S. for 30 full days in a row, your period of absence is considered unbroken until you return to the U.S. and stay for 30 full days in a row. If you do not return for 30 full days in a row, your benefits are suspended effective with the seventh month after the month you left the U.S.; that is, after six full calendar months in a row have passed.

Miss Kelly leaves the U.S. on May 15, returns on August 1, and leaves again on August 20. Because she is outside the U.S. for (at least) 30 days, her August visit of less than 30 days does not break her period of absence and her benefits are suspended effective December, the seventh month after her departure month of May. If Miss Kelly had delayed her second departure until September 1, she would have been in the U.S. for 30 full days (August 2-August 31). The period of absence that began on May 16 would have been broken and a new period of absence would have begun effective September 2.

1844.4. Can benefits start again after they have been suspended?

Once your benefits have been suspended because of your absence from the U.S., they may not start again until you return to the U.S. and remain for one full calendar month.

Mr. Michael's benefits are suspended in October because of his absence from the U.S. He returns to the U.S. on January 31 and leaves again on March 1. Mr. Michael's benefits are resumed for February, the first full calendar month he spends in the U.S. (Note that the number of days in the calendar month is not a factor.)

1845. Exceptions to alien nonpayment provision.

1845.1. What are the exceptions to alien nonpayment provision?

There are exceptions to the alien nonpayment provision that permit the payment of benefits, even if you are absent from the U.S. The alien nonpayment provision does not apply if:

- A. The worker on whose earnings record benefits are being paid:
 - 1. Had at least 40 quarters of coverage (see §1846 for limitations);
 - 2. Resided in the U.S. for a period or periods totaling 10 years or more (see §1846 for limitations);
 - 3. Had earnings from railroad employment that were counted for Social Security because no railroad benefits were payable on the basis of these earnings (see §1846 for limitations);
 - 4. Died while in military service of the U.S.; or
 - 5. Died as the result of a disease or injury certified by the Department of Veterans Affairs to have been incurred or aggravated in line of duty during a period of military service. The service member was discharged or released under conditions other than dishonorable; or
- B. The alien beneficiary (whether the insured worker or a person entitled to benefits on his or her record):
 - 1. Was entitled (or upon filing an application would have been entitled) to a monthly benefit of any kind on the same Social Security earnings record for December 1956;
 - 2. Is outside the U.S. because he or she is in the active military or naval service of the U.S. (see §1846 for limitations);
 - 3. Resides in a country with which the U.S. has an international social security agreement and the withholding of benefits would be against the terms of that agreement (see §107);
 - 4. Is a citizen of a country that had in effect on August 1, 1956, a treaty with the U.S. providing for reciprocal payments of Social Security benefits to citizens of each country (i.e. the Federal Republic of Germany, Greece, the Republic of Ireland, Israel, Italy, Japan, and the Netherlands (survivor benefits only)); or

5. Is a citizen of a foreign country that has a social insurance system that is of general application in that country and under which (see §1846 for limitations):
 - a. Periodic benefits are payable because of old age, retirement, or death; and
 - b. Benefits are payable at the full rate to eligible citizens of the U.S. who are not citizens of that foreign country, even while outside the foreign country. These benefits are payable regardless of how long they remain outside that country.

1845.2. What countries have social insurance systems of general application?

The following countries currently have a social insurance system that meet the conditions described above:

Albania	Korea, Republic Of
Antigua and Barbuda	Latvia
Argentina	Liechtenstein
Austria	Luxembourg
The Bahamas	Macedonia, Former
Barbados	Malta
Belgium	Marshall Islands
Belize	Mexico
Bolivia	Micronesia, Fed. States of
Bosnia-Herzegovina	Monaco
Brazil	The Netherlands
Burkina Faso	Nicaragua
Canada	Norway
Chile	Palau
Colombia	Panama
Costa Rica	Peru
Croatia	The Philippines
Cyprus	Poland
Czech Republic	Portugal
Denmark	St. Christopher and Nevis
Dominica	St. Lucia
Dominican Republic	Samoa
Ecuador	San Marino

El Salvador	Serbia-Montenegro
Finland	Slovak Republic
France	Slovenia
Gabon	Spain
Grenada	Sweden
Guatemala	Switzerland
Guyana	Trinidad - Tobago
Hungary	Turkey
Iceland	United Kingdom
Ivory Coast	Uruguay
Jamaica	Venezuela
Jordan	Yugoslav Rep. of

1846. Limitations on use of certain exceptions.

1846.1. What limitations apply to the exceptions to the alien nonpayment provision?

Limitations apply to the use of several of the exceptions listed in §1845. The exceptions in §1845 (A.1) and (A.2) cannot be applied to any alien who is:

- A. A citizen of a country that has a social insurance or pension system of general application that does not provide for full payment to eligible U.S. citizens who are outside the country; or
- B. A citizen of a country that has no social insurance or pension system of general application and is a country to which Treasury Department regulations currently, or within five years before January 1968, prohibit the delivery of checks. These countries are:

Algeria	Mongolia
Andorra	Mozambique
Angola	Nauru
Armenia	New Zealand
Azerbaijan	Niger
Bahrain	North Korea*
Belarus	Oman
Benin	Papua-New Guinea
Brunei	Paraguay
Bulgaria	Qatar

Cambodia	Republic of Vietnam
Comoros	Romania
Cuba*	Russia
Djibouti	Rwanda
Egypt	Sao Tome and Principe
Equatorial Guinea	Saudi Arabia
Estonia	Seychelles, Republic of
Georgia	Suriname
Guinea	Syria
Guinea-Bissau	Tajikistan
Iran	Turkmenistan
Iraq	Tuvalu
Kazakhstan	Ukraine
Kiribati	United Arab Emirates
Kyrgyzstan	Uruguay
Kuwait	Uzbekistan
Libya	Vanuatu
Lithuania	Zaire
Maldiv Islands	Zambia
Moldova	Zimbabwe

***Treasury restrictions apply.** See also §§1847-1848.

Note: This limitation applies only to those beneficiaries who are citizens of the countries listed above. It does not affect payment to other beneficiaries on the same earnings record who are not citizens of those countries.

1846.2. What limitations to the exceptions apply to aliens entitled to benefits on another person's record?

The exceptions listed in §§1845 (A.1), (A.2), (A.3), (B.2), and (B.5) cannot be applied to an alien entitled to spouse or child (auxiliary) or survivor benefits unless certain residency requirements are met. The auxiliary or survivor must have:

- A. Resided in the U.S. for a total period of at least five years; and
- B. Had a relationship during the five-year period with the worker as a parent, a child, or one or more of the following:
 - 1. Spouse;
 - 2. Widow(er);

3. Divorced spouse; or
4. Surviving divorced spouse.

Note: The U.S. residency requirements do not apply to aliens who are citizens or residents of a country with which the U.S. has an international social security agreement. (See §107.)

1846.3. How does a child meet the residency requirement, other than on his or her own?

A child of the worker who can not meet the residency requirement on his or her own may meet it if:

- A. The worker and the child's other parent, if any, each resided in the U.S. for a total period of at least five years; and
- B. If adopted, the worker adopted the child in the U.S. and lived with the child in the U.S. During the period the child lived with the worker in the U.S., the worker provided at least one-half of the child's support for a period:
 1. Beginning before the child turns age 18; and
 2. Consisting of the year immediately before the month the worker:
 - a. Began a period of disability;
 - b. Became entitled to retirement or disability insurance benefits; or
 - c. Died.

1847. Residence in a restricted country.

1847.1. What is a "restricted country"?

A restricted country is one to which delivery of benefit checks is prohibited by the Treasury Department. Conditions are such that there is no reasonable assurance that you would actually receive your checks or are able to cash them for full value.

1847.2. Can you receive benefits if you live in a restricted country?

You cannot receive benefits, either for yourself or on behalf of any beneficiary, if you live in a restricted country. In addition, no lump-sum death payment can be paid on the record of a worker if a monthly benefit was not, or would not have been, payable to the worker for the month before the month of death because of residence in a restricted country.

1848. What are the restricted countries?

The Treasury Department does not allow payment to or on behalf of beneficiaries in the following restricted countries: Cuba, Democratic Kampuchea (Cambodia), and North Korea.

1849. When can you receive benefits you earned while you lived in a restricted country?

If you are a U.S. citizen or national and you accrued benefits while living in a restricted country, you may be paid your benefits when you leave the restricted country. However, a non-U.S. citizen or national who leaves a restricted country may not receive any benefits for months after June 1968 that were withheld because of Treasury restrictions.

1850. Confinement in a penal institution.

1850.1. Do you receive benefits if you are in a penal institution?

Your benefits are withheld for any month, or any part of a month, you are confined in a penal institution in the U.S. based on a conviction.

1850.2. Are your benefits withheld even if you have a mental impairment?

Your benefits are also withheld if you are confined by court order to an institution in the U.S. at public expense in connection with a verdict or finding that you are:

- A. Guilty but insane with respect to a criminal offense;
- B. Not guilty of a criminal offense by reason of insanity;
- C. Incompetent to stand trial under an allegation of a criminal offense;
or
- D. Found to be under similar conditions (such as mental disease, mental defect, or mental incompetence) with respect to a criminal offense.

1850.3. Are there any other situations when benefits are withheld because you are confined in an institution?

Your benefits are withheld if, after completing a sentence based on conviction of a crime, an element of which was sexual activity, you are confined by court order in a U.S. institution at public expense based on a finding that you are a sexually dangerous person, sexual predator, or a similar finding.

1851. What events end benefits?

In addition to the circumstances discussed in the preceding sections that can cause deductions from or suspension of benefit payments, there are events that can end your entitlement to benefits. They are provided in the chart below.

Terminating Events

The occurrence of this event...	Ends Payment to These Beneficiaries: (Benefits end with the month before the month the event occurs unless otherwise noted)												
	Retired Worker	Disabled Worker	Spouse	Divorced Spouse	Child Under 18	Child 18-19 full-time Student	Disabled Child 18 or Over	Widow(er)	Disabled Widow(er)	Surviving Divorced Spouse	Mother or Father	Surviving Divorced Mother or Father	Parent
Turning age 18 and not a full-time student or disabled.	-	-	-	-	X	-	-	-	-	-	-	-	-
Turning age 19.	-	-	-	-	-	X (9)	-	-	-	-	-	-	-
Turning age 65.	-	X (1)	-	-	-	-	-	-	-	-	-	-	-
Student not in full-time school attendance and not disabled.	-	-	-	-	-	X (12)	-	-	-	-	-	-	-
Disability of worker getting disability benefits ends.	-	X (2)	X (2)	X (2)	X	X	X	-	-	-	-	-	-

The occurrence of this event...	Ends Payment to These Beneficiaries: (Benefits end with the month before the month the event occurs unless otherwise noted)												
	Retired Worker	Disabled Worker	Spouse	Divorced Spouse	Child Under 18	Child 18-19 full-time Student	Disabled Child 18 or Over	Widow(er)	Disabled Widow(er)	Surviving Divorced Spouse	Mother or Father	Surviving Divorced Mother or Father	Parent
Disability of beneficiary ends.	-	-	-	-	-	-	X (3)	-	X (3)	X (11)	-	-	-
Death of worker.	X	X	X (4)	X (10)	-	-	-	-	-	-	-	-	-
Death of beneficiary other than worker.	-	-	X	X	X	X	X	X	X	X	X	X	X
Divorce or annulment (final decree).	-	-	X (5)	-	-	-	-	-	-	-	-	-	-
Entitlement to retirement or disability insurance benefit based on primary insurance amount equal to or exceeding $\frac{1}{2}$ the worker's primary insurance amount.	-	-	X	X	-	-	-	-	-	-	-	-	-

The occurrence of this event...	Ends Payment to These Beneficiaries: (Benefits end with the month before the month the event occurs unless otherwise noted)												
	Retired Worker	Disabled Worker	Spouse	Divorced Spouse	Child Under 18	Child 18-19 full-time Student	Disabled Child 18 or Over	Widow(er)	Disabled Widow(er)	Surviving Divorced Spouse	Mother or Father	Surviving Divorced Mother or Father	Parent
Entitlement to retirement insurance benefit equal to or exceeding amount of survivor's benefit.	-	-	-	-	-	-	-	X	-	X	X	X	X
Entitlement to widow(er)'s insurance benefit.	-	-	-	-	-	-	-	-	-	-	X	X	-
Certification of entitlement of another person as legal spouse.	-	-	X (6)	-	-	-	-	X (6)	X (6)	-	X (6)	-	-
Marriage or remarriage.	-	-	-(6)	X (7)	X	X	X (7)	-	-	-	X (7)	X (7)	X (7)
Valid marriage to someone other than worker.	-	-	X (6)	-	-	-	-	-	-	-	-	-	-

The occurrence of this event...	Ends Payment to These Beneficiaries: (Benefits end with the month before the month the event occurs unless otherwise noted)												
	Retired Worker	Disabled Worker	Spouse	Divorced Spouse	Child Under 18	Child 18-19 full-time Student	Disabled Child 18 or Over	Widow(er)	Disabled Widow(er)	Surviving Divorced Spouse	Mother or Father	Surviving Divorced Mother or Father	Parent
No child of worker under age 16 or age 16 or over and disabled.	-	-	X (8)	-	-	-	-	-	-	-	X	X	-
No natural or adopted child of beneficiary entitled on worker's earnings record.	-	-	-	-	-	-	-	-	-	-	-	X	-

- (1) Retirement insurance benefit payable instead.
- (2) The last month of entitlement is the second month after the month in which the disability ends, or the month before the month in which the individual turns age 65, whichever occurs first.
- (3) The last month of entitlement is the second month after the month in which the disability ends or the beneficiary is under age 65.
- (4) Widow's or widower's benefits usually payable.
- (5) Except where spouse had attained age 62 at the same time of the divorce and her marriage to the worker had been in effect for 10 years immediately preceding the effective date of the final divorce.
- (6) If beneficiary is entitled as "de facto" spouse, that is, if he or she is qualified for benefits only under the provisions explained in §§306.1(B), or 402.1(B).

(7) See Chapters Chapter 3 and Chapter 4 for information on when marriage to another beneficiary does not end benefits.

(8) Unless spouse is at least age 65, or is at least age 62 and has elected to receive reduced benefits.

(9) If the student has not completed the requirements for a secondary school diploma or equivalent certificate, benefits continue through the month the course is completed or for 2 months after attainment of age 19, whichever is less.

(10) Surviving divorced wife's benefits usually payable.

(11) Only if entitlement is as a disabled surviving divorced spouse.

(12) A student, otherwise in full-time attendance, is deemed not to be in full-time attendance if the student is confined in a penal institution pursuant to his or her conviction of a felony committed after October 19, 1980.

1852. How does the marriage of one beneficiary to another affect benefits?

The effect of one beneficiary's marriage to another is summarized in the following chart:

Effect of Marriage to Another Beneficiary

If you are the following type of beneficiary...	Then marrying another Social Security beneficiary has the following effect...
Retired or disabled worker, widow(er), disabled widow(er), surviving divorced spouse or disabled surviving divorced spouse	No effect on entitlement.
Child under age 18 or student	Always terminates entitlement.
Parent or divorced spouse	No effect on entitlement unless marriage is to a retired or disabled worker, a child under age 18, or a student, in which case benefits of the parent or divorced spouse terminate.
Mother, father, surviving divorced mother/father or childhood disability beneficiary	No effect on entitlement unless marriage is to a child under age 18 or a student, in which case both benefits terminate.

1853. Reinstatement of benefits when marriage terminates.

1853.1. Can your benefits start again if your marriage ends?

Your benefits may start again under the following conditions:

- A. If your marriage is voided, your benefits may begin again as of the month they ended because of the marriage, subject to the rules on administrative finality (see §2016); or
- B. If your marriage has been annulled from the beginning in accordance with State law by a court having jurisdiction over the matter, your benefits can be reinstated as of the month the decree of annulment was issued. You must file a timely application.

1853.2. Who may have benefits on a prior spouse's earnings record in the event of remarriage?

If benefit rights ended because of remarriage, the following individuals may also have benefits on the prior spouse's Social Security earnings record:

- A. Divorced spouse;
- B. Mother or father;
- C. Widow(er);
- D. Surviving divorced spouse; or
- E. Surviving divorced mother or father.

CHAPTER 19

UNDERPAYMENTS AND OVERPAYMENTS

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1900. What is an underpayment?

An underpayment is an amount that is owed to a person and that has not yet been paid. Underpayments usually result from unpaid benefits that have accumulated, or checks that have not been cashed.

1901. Is a written request required for an unpaid benefit to be paid to a living person?

No, a written request is not required. We generally pay an unpaid amount owed to a living person automatically. It may be paid in a single check or added to other benefits that are payable.

1902. Unpaid amounts owed to a deceased person.

1902.1. Is a written request required to obtain payments owed to a deceased person?

We pay unpaid amounts owed to a deceased person automatically without a separate written request if our records contain sufficient information to determine the identity and current address of all people entitled to the underpayment.

1902.2. If complete information is not available on all those entitled to the underpayment, what should be done?

If complete information is not available, we need a separate written request from at least one person entitled to receive a portion of the underpayment.

1902.3. What is the order of payment for people entitled to the underpayment for retirement, survivors, and disability insurance (RSDI)?

Payments are made in the following order:

- A. The widow(er) of the underpaid person if:
 1. Living in the same household with the underpaid person at the time of death; or
 2. Entitled to a monthly benefit on the same earnings record as the underpaid person for the month of death.
- B. The child or children of the underpaid person entitled to monthly benefits on the same earnings record as the underpaid person for the month of death. If there is more than one entitled child, payment is made in equal parts to each child;
- C. The parent or parents of the underpaid person entitled to monthly benefits on the same earnings record as the underpaid person for

the month of death. If there is more than one entitled parent, payment is made in equal parts to each parent;

- D. A widow(er) who does not meet the requirements of (A);
 - E. A child or children who do not meet the requirements of (B). If there is more than one child, payment is made in equal parts to each child;
 - F. A parent or parents who do not meet the requirements of (C). If there is more than one parent, payment is made in equal parts to each parent; and
 - G. The legal representative of the underpaid person's estate.
- A surviving divorced spouse does not qualify as the “widow(er)” under this provision.

1902.4. How are Supplemental Security Income (SSI) payments made?

We pay Supplemental Security Income (SSI) underpayments to a surviving spouse who was living in the same household with the underpaid person at any time in the month of death or the preceding six months.

1902.5. How are payments made for a disabled or blind child?

If the underpaid person was a disabled or blind child, underpayments are payable to a surviving parent(s) who was living in the same household with the child at any time in the month of death or the preceding six months.

1903. Legal representatives.

1903.1. What is the definition of “legal representative”?

As used in this Chapter, “legal representative” means an administrator or executor or other person who qualifies under a State statute (or, where applicable, the law of a foreign country) to receive payment on behalf of the estate.

1903.2. What must a person do to become a legal representative?

In order to be a legal representative, a person acting on behalf of an unadministered estate must:

- A. Prove to us that payment will relieve us of legal liability to any other person; and
- B. Provide proof of appointment or other evidence showing authorization under a State statute (or, where applicable, the law of a foreign country).

Note: Under the SSI program, an underpayment cannot be paid to an estate.

1904. What is an overpayment?

Overpayment defined. An overpayment is an excess payment. It is the amount by which payments exceed the amount that should have been paid for that period.

1905. Written notice of overpayments.

1905.1. How are individuals notified of overpayments?

When we decide an overpayment has been made, we send a written notice to the overpaid individual (and/or the representative payee, if any, and the legal representative, if any).

1905.2. What information is in the notice?

If you receive an overpayment notification, you will find the following information:

- A. The amount overpaid, including correct and incorrect amounts for each month in the overpayment period;
- B. How and when the overpayment occurred;
- C. Your right to appeal (to request reconsideration of) the overpayment determination (see Chapter 20);
- D. Action required by you:
 1. **For RSDI or black lung benefits:** a request for full, immediate refund, unless the overpayment can be withheld from the next month's benefit, and the proposed adjustment (see §1909) if adjustment is available. Adjustment action is effective with the second month following the date of the notice unless full refund or a request for reconsideration, waiver, or a different rate of adjustment is received within 30 days. (See §1910, §1914, and §2004.)
 2. **For SSI payments:** a request for full, immediate refund, and the proposed rate of adjustment if payment continues. Adjustment begins with the first month occurring 60 days after the date of the overpayment notice, unless a full refund or request for reconsideration, waiver, or a different rate of adjustment is received within 30 days;
- E. Your right to request waiver of recovery of the overpayment (see §1914);
- F. In the case of overpaid RSDI or black lung benefits, the automatic scheduling of a personal conference if the waiver request cannot be approved;

G. The availability of:

1. A different rate of adjustment when full withholding of RSDI and black lung benefits is proposed, or for SSI payments, a different rate of adjustment;
2. Installment payment when adjustment is not currently available;
3. Availability of cross program recovery when you are receiving benefits under more than one SSA program (e.g., retirement benefits, or SSI payments, or disability benefits, or black lung benefits).

H. Mandatory cross program recovery when you are no longer receiving SSI payments but are receiving benefits under another SSA program (e.g., retirement benefits, or disability benefits);

I. The need to notify a Social Security office promptly if you want reconsideration, waiver, a lesser rate of adjustment, or to repay by installments or cross-program adjustment; and

J. The appropriate penalty notification, if applicable.

1906. Liability for repayments.

1906.1. Who is liable for repayments?

A beneficiary and/or a representative payee receiving retirement, survivors or disability insurance, SSI, or black lung benefits on behalf of a beneficiary, may be equally liable for repayment of any overpayment received, as follows:

- A. The beneficiary is liable if he or she received the benefit of the monies;
- B. The representative payee is personally liable if he or she:
 1. Was at fault in creating the overpayment; or
 2. Did not apply the monies for the beneficiary's use and benefit.

1906.2. Can other individuals be liable for overpayments?

Liability for repayment may move from the overpaid beneficiary or payee to certain others in particular situations:

- A. If the overpaid beneficiary or payee has died, the estate is liable for repayment. We may ask the legal representative to make a refund, or we may withhold benefits due the estate. We may also require the recipients of the estate to refund an overpaid amount to the extent of funds received from the estate; and
- B. If an RSDI or black lung overpayment cannot be recovered from the overpaid beneficiary, the payee, or the estate, benefits may be

withheld from other persons entitled to benefits on the same earnings record.

1906.3. Who is liable for repayment of SSI benefits?

An individual and spouse who receive SSI payments as a married couple are equally liable if either is overpaid. If overpayment of SSI benefits was made to an alien, the alien and the person who sponsored the alien for admission to the U.S. are equally liable if the overpayment resulted from the sponsor's failure to provide correct information about income and resources. (See §2170.)

Note: When an alien sponsored under a legally enforceable agreement of support receives SSI payments, the individual sponsoring the alien SSI recipient is liable to repay the entire amount of the SSI payments made to the alien recipient.

1907. How are overpayments recovered?

We generally recover overpayments by:

- A. Refund;
- B. Adjustment or withholding of benefits payable;
- C. Compromise settlement;
- D. Civil suit; or
- E. Internal Revenue Service (IRS) withholding of Federal tax refunds.

1908. Refunds of overpayments.

1908.1. When are refunds of overpayments requested?

We request refunds as soon as the overpayment is detected.

1908.2. How should refund payments be made?

If you were overpaid, make your refund payment by check or money order to "Social Security Administration, Claim No. ___." For RSDI debts, and for SSI debts when the SSI **individual is not receiving monthly payments**, we accept credit card refund payments. We will provide a pre-addressed envelope for return of the check, money order, or credit card authorized form.

1908.3. What happens if SSA does not receive the full refund?

If we do not receive a full refund, we may withhold benefits as described in §1910 in an amount required to cover the overpayment. (See §134 for return of benefit checks.) If you do not send the full refund and the overpayment cannot be withheld from benefits as described in §1910, you may arrange an installment plan of repayment.

1908.4. What should be done with uncashed benefit checks?

If an overpayment has been made, return any benefit checks on hand.

1909. Adjustment of benefits to recover overpayments.

1909.1. How are benefits adjusted to recover overpayments for RSDI or black lung programs?

We may adjust or withhold benefits to recover an overpayment for benefits payable under the RSDI or black lung programs as follows:

- A. The amount of the overpayment may be withheld from any benefits to which the overpaid person is entitled as follows:
 - 1. From his or her own earnings record or on the earnings record of any other person; or
 - 2. From benefits payable to others on the earnings record on which the overpayment was made.

1909.2. If the overpaid person is deceased, how is the repayment made?

When the overpaid person is deceased, we may withhold the amount of the overpayment from the lump-sum death payment payable on deceased's earnings record. If a lump-sum death payment has already been made despite an overpayment, the individual who received the payment must refund it.

1909.3. Are overpayments recovered by adjustment against SSI payments?

We do not recover overpayments under RSDI or black lung programs by adjustment against an SSI payment, unless the individual owing the refund makes such a request. Similarly, we do not recover an overpayment of RSDI benefits by adjustment against black lung benefits (nor vice versa) unless the person owing the refund makes such a request.

1909.4. How are overpayments under the SSI program recovered?

For benefits payable under the SSI program, we may adjust or withhold benefits to recover overpayments as follows:

- A. Adjustment may be made against any payment due an overpaid individual or eligible spouse (as defined in §2110) or the estate of either or both if benefits have not been recovered prior to the death of either or both;
- B. Overpayments are adjusted against any payments due an eligible individual and eligible spouse (as defined in §2110) before any further payment is made if the overpayment was created by the

disposition of resources or is related to non-excluded resources; (See §§2148-2166.)

- C. Overpayments are never adjusted against Medicare payments but will be adjusted against benefits payable under the RSDI programs if one of the following conditions applies:
1. Effective 01/01 adjustment will be made against benefits payable under the RSDI program to recover SSI overpayments when it is not possible to adjust benefits payable under the SSI program; or
 2. The overpayment resulted from the deeming of income or resources to an alien from the person who sponsored him or her for admission to the U.S. (See §2170.)

1910. Rate of withholding.

1910.1. What is the rate of withholding under the RSDI and black lung programs?

If you are under the RSDI or black lung program, we withhold all benefits until the overpayment is recovered, unless:

- A. You request a lesser withholding; and
- B. You demonstrate that full withholding will cause financial hardship.

1910.2. What is the rate of withholding under the SSI program?

If you are under the SSI program, your benefits are withheld at the lesser rate of:

- A. Your entire monthly benefit; or
- B. An amount equal to 10 percent of your total countable income (including SSI and State supplementary payments). (See Chapter 21.)

1911. Compromise settlement of an overpayment.

1911.1. What is a compromise settlement?

A compromise settlement occurs when we accept an amount less than the full overpayment and forgive repayment of the rest of the debt.

1911.2. What law permits compromise settlements?

The Federal Claims Collection Act of 1966 permits Federal agencies to arrange compromise settlements of overpayment claims.

1911.3. Can compromise settlements be appealed?

No, compromise settlements cannot be appealed because the settlement is at our discretion.

1911.4. When are compromise settlements acceptable?

Generally, we accept a compromise when one of the following conditions exists:

- A. The debtor is unable to pay the full amount within a reasonable time;
- B. The Government is unable to enforce collection of the full amount within a reasonable time;
- C. The Government is unable to obtain full recovery through court action because of the legal issues involved or there is a legitimate dispute as to the facts; or
- D. The cost of collecting the claim is likely to exceed the amount to be recovered.

1912. Recovery by civil suit.

1912.1. Can a civil suit be used to recover overpayments?

Yes, a civil suit can be used to recover an overpayment. A civil suit is a legal proceeding that can be filed in a Federal court of law.

1912.2. What Federal agency handles civil suits for overpayments?

Appropriate cases are referred to the Department of Justice for civil action.

1912.3. When must civil suits for overpayments be filed?

Generally, we must file a civil suit before the later of:

- A. Six years after an overpayment has been made; or
- B. One year after a final decision has been rendered in an administrative proceeding.

1912.4. Who can be sued for overpayments?

The representative payee and the beneficiary may both be sued in a civil suit if both are liable.

1913. Recovery efforts.

1913.1. When does SSA stop trying to recover overpayments?

Recovery efforts. The Federal Claims Collection Act of 1966 permits us to stop trying to recover an overpayment from you when the overpayment:

- A. Does not exceed \$100,000;
- B. Was not received as a result of fraud; and
- C. Any one of the following conditions also exists:

1. Collection of a significant portion of the overpayment cannot be accomplished by compromise settlement or civil suit considering your current and future financial prospects;
2. You cannot be located after diligent search; or
3. The cost of further collection efforts is likely to exceed the amount recovered.

1913.2. What law permits recovery of delinquent Title II debts by withholding Federal income tax refunds?

The Omnibus Budget Reconciliation Act of 1990 permits us to have the Department of the Treasury (Treasury) withhold or reduce (called “offsetting”) Federal income tax refunds to collect delinquent Title II debts.

1913.3. What law permits recovery of delinquent Title XVI debts by withholding Federal income tax refunds?

The Deficit Reduction Act of 1984 permits us to have Treasury offset Federal income tax refunds to collect delinquent Title XVI debts. We use this debt collection technique to recover debts owed by former beneficiaries and recipients.

1913.4. How are delinquent debtors referred to Treasury?

The selection and referral of delinquent debtors to Treasury is a monthly, automated operation that results in offsets on a continual basis. We select debtors for this program based on many criteria, including the following:

- A. You must be at least 18 years old;
- B. The debt is greater than \$25;
- C. The debt has been delinquent for less than 10 years;
- D. You are no longer receiving Social Security payments; and
- E. You are alive.

1913.5. How are debtors notified of SSA's intent to refer a debt to Treasury for collection through income tax refunds?

If we refer your debt to Treasury for offset, we send a notice to you to inform you. The notice provides due process rights and gives you the chance to repay the debt.

1913.6. What is the definition of “administrative offset”?

“Administrative offset” is the withholding or reduction of Federal payments other than tax refunds.

1913.7. When can SSA use administrative offset and credit bureau reporting to collect unrecoverable Title II debts?

The Domestic Employment Reform Act of 1994 permits us to use administrative offset and credit bureau reporting to collect unrecoverable Title II debts. (Title XVI debts are not collected via those techniques.) Treasury performs this activity for us. Credit bureau reporting involves notifying credit bureaus that a former beneficiary owes us a debt that has been determined to be unrecoverable.

1913.8. How are debtors referred to Treasury for administrative offset and credit bureau reporting?

Selection and referral of the debts is a monthly, automated operation.

1913.9. How are debtors notified of SSA's intent to refer a debt to Treasury for administrative offset and credit bureau reporting?

If you are selected for these collection techniques, we send notices to inform you. The notices provide due process rights and give you the chance to repay the debt to avoid the administrative offset and credit bureau reporting.

1914. Relief from making repayment (waiver).

1914.1. What is the definition of "waiver"?

A "waiver" occurs when you are given relief from making repayment. Your debt does not have to be paid.

1914.2. When is waiver granted?

We may grant a waiver when:

- A. You are without fault, and
- B. Recovery or adjustment:
 1. Would defeat the purpose of the program involved;
 2. Would be against equity and good conscience; or
 3. For the SSI program only, would impede efficient or effective administration of the program because of the small amount involved.

1914.3. When can waiver be requested?

You may request a waiver of recovery of an overpayment at any time.

1914.4. What happens when SSA receives a request for waiver?

When we receive a request for waiver, all recovery actions stop until your request is either approved, denied and, you had the opportunity for a personal conference.

1914.5. What happens if the request is approved?

If your request is approved, you do not have to repay the overpayment. We refund any monies we previously withheld to recover the overpayment.

1915. When is an individual “without fault” in receiving an overpayment?

“Without fault” means that the overpayment did not result from your lack of care, such as:

- A. Furnishing full and accurate information affecting basic rights to benefit payment;
- B. Complying with annual earnings and other reporting requirements; and
- C. Returning checks believed not due.

Even if we caused the overpayment, you must show that you are without fault.

1916. What factors does SSA consider in deciding whether a person is without fault?

In deciding whether you are without fault in causing an overpayment, we consider your:

- A. Understanding of the reporting requirements and of the obligation to return payments which are not due;
- B. Knowledge of the occurrence of events which should have been reported;
- C. Efforts and opportunities to comply with the reporting requirements; and
- D. Ability to comply with the reporting requirements i.e., any physical, mental, educational, or linguistic limitations (including having difficulty with the English language).

1917. When is an individual “at fault” in receiving an overpayment?

You are “at fault” if the overpayment results from:

- A. A willful misstatement;

- B. Hiding of facts or fraud which directly or indirectly caused the overpayment;
- C. Your failure to furnish information that you knew or should have known was important; or
- D. Acceptance of a payment that you knew or should have known was incorrect.

1918. Defeat the purpose as a factor in waiver.

1918.1. When does recovery of an overpayment in the RSDI and black lung benefits programs defeat the purpose of the program?

Recovery of an overpayment of the RSDI and black lung benefits programs defeats the purpose of the program if:

- A. You need substantially all of your income (including Social Security benefits) to meet ordinary and necessary living expenses;
- B. Refund or adjustment of benefits would reduce your total assets to:
 1. Below \$3,000, if you have no dependents; or
 2. Below \$5,000, you have one dependent. For each subsequent dependent, beginning with the second, an additional \$600 is allowed; and
- C. You receive any type of cash welfare payments (including SSI payments).

1918.2. When does recovery of an overpayment in the SSI program defeat the purpose of the program?

Recovery of an overpayment in the SSI program defeats the purpose of the program if refund or adjustment of benefits would deprive you of income or financial resources needed for ordinary and necessary living expenses.

1918.3. How is "ordinary and necessary living expenses" defined?

An individual currently receiving SSI payments is considered to have met the financial requirement if your total income:

- A. Does not exceed the applicable Federal Benefit Rate (see §2113(A)); **plus**
- B. Any State supplement (see §2106); **plus**
- C. The applicable monthly income disregard (i.e., \$20 for a non-working recipient or \$20 plus \$65 for a working recipient).

Note: Regardless of a person's financial situation, recovery cannot defeat the purpose of any program to the extent of incorrect or overpaid funds in the person's possession when he or she is notified of the

overpayment. This means that if the \$500 in a person's bank account is the \$500 payment he should not have received, he is able to repay \$500 of the overpayment. Because the person was not due the money that was deposited into the bank account, no harm is suffered by refunding the money to the Agency.

1919. What is the definition of “against equity and good conscience”?

“Against equity and good conscience” can be established regardless of your financial ability to repay or possession of any part of the overpayment when you:

- A. Changed your position for the worse or neglected a valuable right because of your reliance upon a notice that a payment would be made or because of the overpayment itself (e.g., a beneficiary, relying on benefit payments, signed a lease on a more expensive apartment or retired from a job and cannot get it back);
- B. Were living in a separate household from the overpaid person at the time of the overpayment and did not receive the overpayment (RSDI overpayments only); or
- C. Where a member of an eligible couple legally separated or living apart and did not receive the overpayment (SSI overpayments only).

In these cases, waiver would be granted and you do not need to repay the overpayment debt.

1920. What is the definition of “impede effective or efficient administration” of the SSI program?

“Impede effective or efficient administration” of the SSI program means that the average cost of recovering the overpayment equals or exceeds the amount of the overpayment.

1921. Waiver of recovery from estate of deceased person.

1921.1. When can the estate of a deceased person be granted waiver?

The estate of a deceased person may be relieved from repayment if:

- A. The overpaid person was without fault; and
- B. Recovery during the lifetime of the overpaid person would have been against equity and good conscience.

1921.2. Can waiver of recovery from an estate be based on “defeat the purpose”?

No, waiver of recovery from an estate cannot be based on “defeat the purpose” even if waiver of recovery on that basis would have been

proper during the overpaid person's lifetime. This is because an estate cannot be considered to require income for ordinary and necessary living expenses.

1922. If SSA changes its position on a prior decision, can recovery of overpayments be attempted?

Yes, we can reopen a case and make a different decision under the rules given in §2016. Payments made on the basis of the first decision may then be incorrect and constitute overpayments. Such overpayments are subject to recovery unless waiver is granted.

1923. If the Department of Defense reports a service member's death on active duty but the report is later found to be incorrect, what is the effect on benefits paid?

If the Department of Defense makes an incorrect report of the death of a service member on active duty, payments made to survivors are considered correct for the months before we were informed that the service member was alive. Repayments do not need to be made.

CHAPTER 20

DETERMINATIONS AND THE ADMINISTRATIVE REVIEW PROCESS

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2000. Administrative review process.

2000.1. What is the administrative review process?

The administrative review process provides for an appeal if you are dissatisfied with our action concerning your entitlement or continuing entitlement to benefits, or other matters. After we make an initial determination, we may request further information from you or another person who shows in writing that his or her rights may be adversely affected by the initial determination.

2000.2. What are the steps in the administrative review process?

The administrative review process consists of several steps that must be requested in writing, usually within specified time periods (see §2001), and in the following order:

- A. You may request that the initial determination be reconsidered. Reconsideration is a re-examination of the administrative records and an opportunity to submit new and material evidence that results in another determination;
- B. If you disagree with the reconsidered determination, you may request a hearing before an Administrative Law Judge (ALJ) of the Office of Hearings and Appeals;
- C. If you disagree with the ALJ's decision or dismissal, you may request a review by the Appeals Council of the Office of Hearings and Appeals. If you are dissatisfied with the Appeals Council's action, you may file a civil action in a Federal district court.

2000.3. What is the expedited appeals process?

In certain cases, at the reconsideration level or higher where the determination has not become final, you may use the expedited appeals process. This process permits you to go directly to a Federal district court if the only issue is the constitutionality of a provision of the Social Security Act that prevents the payment of benefits or receiving a favorable determination in a non-claim earnings discrepancy case. The Social Security office can advise you or your authorized representative of the exact requirements and procedure for requesting this process. (See also §2001 for time limit for requesting the expedited appeals process.)

The written request for further review at any step of the administrative appeals process may be on a special form, available at any Social Security office, or it may be in a letter. This request may be filed at any Social Security office, the Department of Veterans Affairs

(VA) Regional Office in the Philippines, or an office of the Railroad Retirement Board if the claimant has 10 or more years of service in the railroad industry.

2000.4. What does this chapter cover?

This chapter provides a general description of the administrative review process and explains the rules for reopening determinations and decisions. Exceptions to these rules apply under certain circumstances. Where the exceptions apply, individuals are made aware of them in the notice of the determination or decision.

Note: For information concerning the hospital and medical insurance review process, see Chapter 24. See Chapter 21 for information concerning the supplemental security income (SSI) review process.

2001. Time limits for requesting review.

2001.1. Are time limits imposed for requesting reviews?

Yes, there are time limits for requesting each review in the administrative review process.

2001.2. What happens if the claimant does not request a review within the time limit?

If you or your representative does not appeal within the prescribed time limit (unless a longer period is allowed for good cause as explained in §2015), the determination or decision becomes final and binding on the parties affected, except as provided in §2016.

2001.3. Are time limits extended when they end on non-work days?

Yes. If the time limit for requesting review ends on a Saturday, Sunday, legal holiday, or Federal non-work day set by law or Executive Order, the time limit is extended to the next following work day.

2001.4. What are the time limits for each type of determination?

In the following situations, we presume you received notice no later than the fifth day following the date of the notice, unless you can show that the notice was received later or not at all.

- A. An initial determination becomes final unless you or another person shows in writing that your rights may be adversely affected by the initial determination. Reconsideration must be requested in writing within 60 days after the date of receiving the notice of the initial determination (See §2004.);
- B. A reconsidered determination becomes final unless you or another person shows in writing that your rights may be adversely affected by the decision. A hearing before an ALJ must be requested in

writing within 60 days after the date of receiving the notice of the reconsidered determination (See §2007.);

- C. A decision of the ALJ becomes final unless:
1. You or another party to the hearing decision requests review by the Appeals Council in writing; or
 2. The Appeals Council reviews the request on its own motion. (See §2013.)

The review request must be filed within 60 days after the date of receiving the notice of the ALJ's decision;

- D. An expedited appeals process may be requested:
1. Within 60 days after the date you receive notice of the reconsidered determination;
 2. At any time after you have filed a timely request for a hearing but before you receive notice of the ALJ's decision;
 3. Within 60 days after the date you receive a notice of the ALJ's decision; or
 4. At any time after you have filed a timely request for Appeals Council review, but before you receive notice of the Appeals Council's action.

2001.5. How can claimants get a court review of hearing decisions?

You may obtain a court review of a hearing decision by filing a civil action within 60 days after the date of receiving the notice of the denial or the decision.

2001.6. What court has jurisdiction if the Appeals Council denies a request for review or makes a decision?

A Federal district court has jurisdiction after the Appeals Council has denied a request for review or made a decision. (See §2014.)

2001.7. What court has final say on the SSA's decision?

If a civil action is filed, a Federal district court decides whether to review our decision. The decision of the court, if not appealed, is final.

2001.8. What courts have jurisdiction if a decision is appealed?

If the court's decision is appealed, it is subject to further review and affirmation, modification, or reversal by a Court of Appeals or the Supreme Court. (See §2015 concerning granting an extension of time for filing appeals.)

2002. Initial determinations.

2002.1. What is an initial determination?

An initial determination is a determination we make that is subject to administrative and judicial review.

2002.2. What topics can initial determinations cover?

Initial determinations include, but are not limited to, determinations about:

- A. Entitlement or continuing entitlement to benefits;
- B. Reentitlement to benefits;
- C. The amount of benefits;
- D. Recomputation of benefits;
- E. Revisions of Social Security earnings records;
- F. A deduction from benefits because of work;
- G. Termination of benefits;
- H. The establishment or termination of a period of disability;
- I. Whether benefits should be paid to another person on behalf of the beneficiary (unless the beneficiary is under age 18 (see §1602 for exception) or legally incompetent);
- J. Who will act as payee if we determined that representative payment will be made;
- K. Any overpayment or underpayment of benefits;
- L. How an underpayment of benefits due a deceased person will be paid;
- M. An offset of benefits because of SSI previously received for the same period;
- N. A deduction from disability benefits because of refusal to accept rehabilitation services;
- O. Whether completion of or continuation for a specified period of time in an appropriate vocational rehabilitation program will significantly increase the likelihood that the person will not have to return to the disability benefit rolls and thus, whether benefits may be continued even though the person is not disabled;
- P. Whether an overpayment of benefits must be repaid to us;
- Q. Reduction in disability benefits because the person also receives benefits under a workers' compensation law;
- R. Penalty deductions imposed because of failure to report certain events;

- S. Nonpayment of benefits because of confinement in a jail, prison, or other penal institution in the U.S. for conviction of a felony;
- T. Whether or not the person has a disabling impairment(s) as defined in §507; and
- U. Nonpayment of benefits because the person has not furnished us satisfactory proof of his or her Social Security number, or, if a Social Security number has not been assigned to him or her, he or she has not filed a proper application for one.

2002.3. How does SSA notify claimants of decisions?

We will mail notice of the initial determination both to you and to any person acting on your behalf, stating:

- A. The reasons for the determination;
- B. The effect of the determination; and
- C. Information concerning the right to a reconsideration or to a hearing.

2003. Administrative actions that are not initial determinations.

2003.1. What is the review process for administrative actions that are not initial determinations?

We may review administrative actions that are not initial determinations. These actions are not subject to:

- A. The administrative review process; and
- B. Judicial review.

2003.2. What actions are included?

Administrative actions that are not initial determinations include:

- A. Withholding part of a monthly benefit to recover an overpayment, authorizing fees for representation; and
- B. Denying a request to extend the time period to request review of a determination or decision.

Other administrative actions that are not determinations are listed in our regulations.

2004. Reconsideration.

2004.1. What is the first step in the administrative review process?

Reconsideration is the first step in the administrative review process.

2004.2. How is a request for reconsideration made?

To make a request for reconsideration, you (or another party) must show in writing that your rights may be adversely affected by the initial determination.

2004.3. What is the deadline for requesting a reconsideration?

You must file a request for reconsideration in writing within 60 days after the date notice of the initial determination is received (see §2001 and §2015).

2004.4. What is reconsideration in Title II cases?

In Title II cases, reconsideration is either a case review or a disability hearing.

2004.5. What is reconsideration in Title XIV cases?

In Title XVI cases, reconsideration is a case review, an informal conference, a formal conference, or a disability hearing.

2005. Disability hearing.

2005.1. When can a disability hearing be held?

A disability hearing can be held if:

- A. You have been receiving benefits based on a medical impairment that causes you to be disabled (in Title XVI cases, blind or disabled);
- B. We have made an initial or revised determination, based on medical factors, that you are no longer disabled (in Title XVI cases, blind or disabled) because the impairment:
 - 1. Has ceased;
 - 2. Did not exist; or
 - 3. Is no longer disabling; and
- C. You make a timely request for reconsideration of the initial or revised determination.

2005.2. What issues does the disability hearing address?

The disability hearing addresses only the initial or revised determination, based on medical factors, that you are not now disabled (in Title XVI cases, blind or disabled).

2005.3. Who conducts the disability hearing?

The hearing is conducted by a disability hearing officer who was not involved in making the decision you are appealing.

2005.4. How does the hearing officer announce the results of the hearing?

The disability hearing officer usually issues a written reconsidered determination.

2005.5. What other outcomes are possible?

In some cases, the disability hearing officer may ask for further development, SSA may make a determination based on work activity, or the disability hearing officer's determination may be reviewed.

2006. The reconsideration process.

2006.1. What is the reconsideration process?

The reconsideration process is a thorough and independent reexamination of all evidence on record related to the case. It is based on the evidence submitted for the initial determination, and any further evidence and information that you or your representative submits in connection with the reconsideration.

2006.2. What issues can be raised in the reconsideration process?

The reconsideration is not limited to the issues that you raise.

2006.3. Is the person who makes the reconsidered determination the same one who made the initial one?

No. The person who makes the reconsidered determination must have had no prior involvement with the initial determination.

2006.4. How is the claimant notified of the determination?

You will receive a personalized notice detailing the basis for the determination in your case. (See §111.2.)

2006.5. What are the options for the reconsideration process in Title XVI cases?

In Title XVI cases, the reconsideration process may be a case review, or, under certain circumstances, an informal conference or a formal conference.

- A. **case Review.** An independent review of the record as described in the first paragraph of this section. This is the only option available in cases involving the medical aspects of an initial determination on an application for benefits.
- B. **Informal Conference.** A review as in (A) above in which you may participate. You may present witnesses and may present the case in person.

C. **Formal Conference.** In addition to participating in an informal conference, you may request that adverse witnesses be issued a subpoena and cross-examined by you or your representative. This type of reconsideration is available only if you are eligible for SSI payments and are notified that the payments will be reduced, suspended, or terminated.

2006.6. Is the reconsidered determination binding?

The reconsidered determination is binding unless:

- A. You or any other party to the reconsideration requests a hearing before an ALJ within the stated time period and a decision is made;
- B. The expedited appeals process (see §2000.3 and §2001) is used; or
- C. The reconsidered determination is revised.

2007. Hearing by an administrative law judge (ALJ).

2007.1. When can a claimant request a hearing before an ALJ?

A hearing before an ALJ may be requested if:

- A. You disagree with the reconsidered determination;
- B. You show in writing that your rights may be adversely affected by the decision; or
- C. We have made a reconsidered determination or another type of determination that provides the right to a hearing before an ALJ. These are listed in SSA's regulations.

2007.2. When must the request be made?

You must make a request for a hearing in writing within 60 days after you receive the notice of the determination. (See §2000, §2001, and §2015.)

2007.3. What are the procedures at the hearing?

At the hearing you may:

- A. Appear in person;
- B. Testify under oath or affirmation;
- C. Submit new evidence;
- D. Examine the evidence used in making the determination under review; and
- E. Present and question witnesses. (See §2011.)

2007.4. What happens if a claimant waives the right to an oral hearing?

If you waive the right to an oral hearing, the ALJ will ordinarily make a decision based on the evidence already submitted and any additional evidence that you or any other party presented at the hearing.

2007.5. What is the basis for the ALJ's decision?

The ALJ makes a decision on the basis of:

- A. The evidence already submitted;
- B. Any additional evidence you present;
- C. Evidence that is otherwise obtained; and
- D. Any testimony given at the hearing.

2008. ALJ actions.

2008.1. When may the ALJ dismiss the request for hearing?

The ALJ may dismiss the request for a hearing if:

- A. You request it;
- B. Neither you nor your representative appears at a scheduled hearing, you have not waived the right to appear, and good cause for not appearing cannot be established;
- C. You did not file the request within the time limit and the ALJ does not find there was good cause for missing the time limit;
- D. The person requesting the hearing has no right to a hearing;
- E. A previous determination or decision was made for the same people, involving the same facts and issues, and that determination has become final;
- F. You die and no substitute pursues the request for hearing; or
- G. A fully favorable revised reconsideration determination has been made.

2008.2. If the ALJ holds a hearing, what are the possible procedures?

The ALJ may:

- A. Hold a hearing and issue a decision;
- B. Hold a limited hearing to determine whether your testimony from another witness might constitute new and material evidence that would warrant reopening and revision of a prior determination or decision;

- C. Send back a case involving a mental impairment for preparation of a standard form required in such cases and a new reconsidered determination under certain circumstances; or
- D. Send back a case to the appropriate component of SSA for a revised determination, if there is reason to believe that the revised determination would be fully favorable to you.

2009. Notice of hearing.

2009.1. When are claimants sent hearing notices?

Notice of the time and place of the hearing is sent by the ALJ to the parties to the hearing at least 20 days before the date set for the hearing, to allow time to prepare for it.

2009.2. Where is the hearing held?

The hearing before the ALJ is usually held in the area where the person requesting the hearing resides, although the person may be required to travel up to 75 miles.

2009.3. Are travel expenses paid?

The Government will pay travel expenses to you and reasonably necessary witnesses only if travel over 75 miles is required. The Government may pay a representative for travel expenses to attend a hearing. The travel must originate within the geographic area of the hearing office having jurisdiction over the hearing. The Government specifies a maximum travel allowance.

2009.4. Can an ALJ issue subpoenas?

Yes, an ALJ has authority to issue subpoenas requiring the attendance and testimony of witnesses and the producing of any evidence that relates to the issues involved in the hearing.

2009.5. Can hearings be held outside of the United States?

There is no provision for holding a hearing outside the U.S. The U.S. is defined as the 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

2009.6. What should a person do who is outside the U.S. and wishes a hearing?

If you live outside the U.S. and wish a hearing, the ALJ may decide the case based on the record and any additional evidence submitted, with no one appearing in person. Otherwise, you may travel to the U.S. at your own expense for an oral hearing.

2010. Pre-hearing or post-hearing conferences.

2010.1. When is a pre-hearing or post-hearing conference called?

A pre-hearing or post-hearing conference may be called by the ALJ on his or her own, or at the request of any party to the hearing. The purpose is to facilitate the hearing or the hearing decision.

2010.2. When are people notified of the conference?

The ALJ will notify the parties of the conference at least seven days before the conference date, unless the parties waive advance written notice of the conference.

2010.3. Are topics other than those in the notice considered?

Yes. At the conference, the ALJ may consider matters in addition to those stated in the notice, if the parties consent in writing.

2010.4. What procedures are followed at the conference?

A record of the conference will be made. The ALJ will issue an order stating all agreements and actions resulting from the conference. If the parties do not object, the agreements and actions become part of the hearing record and are binding on all parties.

2011. Assistance from Social Security office.

2011.1. How can the Social Security office help a claimant?

The Social Security office or hearing office can help you or other interested parties prepare for the hearing by:

- A. Explaining the issues involved in the case;
- B. Explaining how the hearing will be conducted;
- C. Telling you how to arrange for the appearance of witnesses;
- D. Advising you how to obtain any documents that may be needed for the presentation of the case; and
- E. Telling you how to arrange for a representative.

2011.2. Can claimants review written materials about the hearing?

Yes, you or your representative may review the record and receive copies of the evidence.

2012. ALJ's decision.

2012.1. What actions may the ALJ take after the hearing?

After the hearing, the ALJ usually issues a written decision based on all the evidence obtained, including your testimony and that of witnesses. The ALJ may also:

- A. Send the case with a recommended decision to the Appeals Council for decision (though this happens very infrequently); or
- B. Dismiss the request as described in §2008.

2012.2. What notification is provided about the results?

All parties to the hearing are notified of the ALJ's action and the reasons for it.

2013. Review by the Appeals Council.

2013.1. When is a review by the Appeals Council requested?

A review by the Appeals Council may be requested if a party to the hearing disagrees with the hearing decision or with the dismissal of the hearing request.

2013.2. What does the Appeals Council do when it receives a request?

The Appeals Council may:

- A. Deny or dismiss the request; or
- B. Grant the request and either issue a decision or remand the case to an ALJ.

2013.3. How should a request for a review by the Appeals Court be filed?

A request for a review by the Appeals Council must be in writing. It must be filed within 60 days after the date a party to the hearing or the party's representative receives notice of the ALJ's action. (See §2000, §2001, and §2015.)

2013.4. When does the Appeals Court decide whether to review the action?

Within 60 days after the date of the ALJ's decision or dismissal, the Appeals Council may on its own initiative (motion) decide to review the action that was taken.

2013.5. How is notice of the hearing provided?

Notice of this review is mailed to all parties at the last known address.

2013.6. When does the Appeals Council review a case?

The Appeals Council will review a case if:

- A. There appears to be an abuse of discretion by the ALJ;
- B. There is an error of law;
- C. The action, findings, or conclusions of the ALJ are not supported by substantial evidence;
- D. There is a broad policy or procedural issue that may affect the general public interest; or
- E. New and material evidence is submitted, the evidence submitted relates to the period on or before the date of the ALJ decision, and the Appeals Council finds that the ALJ's action, findings, or conclusion is/are contrary to the weight of the evidence currently of record.

2014. Appeals Court procedures.

2014.1. What are the steps in the appeals process? The steps are as follows:

- A. The Appeals Court notifies you whether it will review the case.
- B. If the Council decides to review the case, you or your representative may request an appearance before the Council for the presentation of oral arguments.
- C. If the Appeals Council determines that a significant question of law or policy is presented or that oral arguments would be beneficial in rendering a proper decision, the appearance will be granted.
- D. You may also file written statements in support your claim. The Appeals Council will notify you of its action in the case.

2014.2. What action may a claimant take if dissatisfied with the decision?

If you are dissatisfied with the decision of the Appeals Council or denial of the request for review of the ALJ's decision by the Appeals Council, you may bring suit in a Federal district court.

2014.3. When must a civil action be filed?

The civil action in the court must be filed within 60 days after the date of receipt of the notice of the Appeals Council decision or denial of the request for review.

2014.4. What actions may the court take?

The court may enter a judgment affirming, modifying, or reversing our decision, with or without sending the case back to us. Under certain circumstances, the court may return the case to us so we can take additional evidence before the court enters a judgment.

There is no right to court review where the Appeals Council has dismissed a request for review, or denied a request for review of an ALJ's dismissal.

2015. Extension of time for filing.

2015.1. Can an extension be granted for filing a request?

Yes, an extension of time may be granted for filing a request for reconsideration, hearing, Appeals Council review, or the expedited appeals process.

2015.2. What is the procedure for requesting an extension?

You must request an extension of time in writing and establish good cause for failing to file the request within the specified time limit.

2015.3. Who makes the decision about granting an extension for reconsideration?

The decision about granting extension of time for responsible reconsideration is made by the field office, the ALJ, or the Appeals Council, depending on who has jurisdiction.

2015.4. Who makes the decision about granting an extension for filing a civil action in a Federal district court?

The Appeals Council may grant an extension of time for filing a civil action in a Federal district court, where good cause exists for failure to file within the appropriate time.

2015.5. What does SSA consider in deciding whether an individual had good cause for missing a deadline?

In determining whether you had good cause for missing a deadline to request review, we consider:

- A. What circumstances kept you from making the request on time;
- B. Whether our action misled you;
- C. Whether you did not understand the requirements of the Social Security Act, resulting from amendments, other legislation, or court decisions; and
- D. Whether you had any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) that prevented you from filing a timely request or from understanding or knowing about the need to file a timely request for review.

2015.6. What are examples of good cause?

Examples of circumstances where good cause may exist include, but are not limited to, the following situations:

- A. You were seriously ill and were prevented from contacting us in person, in writing, or through a friend, relative, or other person;
- B. There was a death or serious illness in your immediate family;
- C. Important records were destroyed or damaged by fire or other accidental cause;
- D. You were making serious efforts to find necessary information to support the claim but had not been able to obtain it within the stated time periods;
- E. You requested additional information from us explaining this action within the time limit. Within 60 days of receiving the explanation you requested reconsideration or a hearing, or within 30 days of receiving the explanation requested Appeals Council review or filed a civil suit;
- F. We gave you incorrect or incomplete information about when and how to request administrative review or to file a civil suit;
- G. You did not receive notice of the determination or decision;
- H. You sent the request to another Government agency in good faith within the time limit and the request did not reach us until after the time period had expired; or
- I. Unusual or unavoidable circumstances exist, including the circumstances described in paragraph 2015.5 of this section, which show that you could not have known of the need to file timely, or which prevented you from filing timely.

2016. Time limit for reopening final determinations.

2016.1. Can a case be reopened after a final decision?

Even though a determination or decision has become final it may be reopened and revised (by the SSA field office, reviewing office, ALJ, or Appeals Council) as described below.

2016.2. What determinations are covered in this section?

The following sections discuss the time limitations on the reopening of final determinations or final decisions except those dealing with a Social Security earnings record. (Earnings records are corrected in accordance with the statute of limitations (see §1423).)

2016.3. When may a determination or decision be reopened?

A determination or decision which has become final (see §2001) may be reopened and revised:

- A. Within 12 months from the date of the notice of the initial determination for any reason;
- B. Within four years (two years in the SSI program) from the date of the notice of the initial determination, if there is good cause for reopening it. "Good cause" can be found to exist if:
 1. New and material evidence is submitted;
 2. A clerical error was made; or
 3. The evidence that was considered in making the determination or decision clearly shows that an error was made.

Note: "Good cause" does not exist where the only basis for reopening the determination or decision is a change of legal interpretation or administrative ruling on which the determination or decision was based.

Action reopening the determination or decision under either (A) or (B) above must be started within the time limit specified.

- C. At any time it was based on fraud or similar fault. For Title II cases only, several other provisions listed in our regulations permit reopening a determination at any time. In Title XVI cases, the "at any time" rule applies only if fraud or similar fault is involved.

We may decide to reopen a determination or decision on its own motion or as the result of receiving a written request from you, an eligible spouse, or representative payee. The decision to reopen or not to reopen is not an initial determination and is not subject to appeal. It is an administrative action that we will usually take if the above criteria are met.

2017. Representation of claimant.

2017.1. Can an attorney represent a claimant?

You may be represented by an attorney or any other qualified person at any or every step in the proceedings before us; e.g., initial determination, reconsideration, hearing, and/or Appeals Council review.

2017.2. Are there restrictions on who may represent a claimant?

The following restrictions apply:

- A. No one who has been suspended or disqualified by us from representing Social Security claimants or who is otherwise prohibited by law from acting as a representative may be appointed as your representative; and
- B. Only individuals may be appointed as representatives of claimants. A qualified member in a firm, labor union, or other organization may be appointed your representative, but the firm, labor union, etc. will not be recognized as a representative.

2017.3. How does a claimant appoint a representative?

To appoint a representative, whether an attorney or other individual, you must do so in writing over your own signature (preferably on a special form available at any Social Security office). File the written appointment with us. If the representative is not an attorney, he or she must also submit a written acceptance to us. It is not necessary for an attorney to accept the appointment in writing.

2017.4. What information is available to the representative?

The representative may obtain the same information about the claim that would be available to you when acting on your behalf.

2017.5. What actions may the representative take?

The representative may also submit evidence, make statements about facts and law, and make any request or give any notice concerning the proceedings. He or she may not sign an application on your behalf for rights or benefits, or testify on your behalf in any administrative proceeding.

2017.6. How does SSA notify the representative?

We will send your representative a notice and a copy of any administrative action, determination, or decision, and requests for information or evidence. These notices or requests will have the same force and effect as if they had been sent to you.

2018. Representatives' fees.

2018.1. Who sets the fees for representatives' services?

We must authorize the amount of any fee that an attorney or other person may charge and collect from you for services performed as a representative in dealings with us.

2018.2. How does SSA authorize fees?

We have two methods of authorizing representative's fees: The (1) fee agreement and (2) fee petition processes.

If you and your representative elect to use the fee agreement process, you must file a written agreement with us before the date on which we

make a favorable determination or decision on the claim. We usually approve the fee agreement if:

- A. Both you and your representative have signed it;
- B. The fee specified in the agreement does not exceed 25 percent of the past-due benefits or \$4,000, whichever is less;
- C. Our determination or decision in the claim is fully or partially favorable; and
- D. The claim results in past-due benefits.

2018.3. When does SSA approve or disapprove the fee agreement?

We approve or disapprove the fee agreement at the time we make a favorable determination or decision on a claim. We then notify you and your representative of the determination on the fee agreement.

2018.4. If SSA disapproves the fee agreement, can the claimant request review?

If we disapprove the fee agreement, you and your representative have 15 days after the date of receiving notice of the disapproval to request review of the determination.

2018.5. If SSA approves the fee agreement, what actions take place?

If we approve the fee agreement, we notify you, your representative, and the SSA employee who approved the fee agreement (the decision maker) of:

- A. The amount of the past-due benefits;
- B. The amount of the past-due benefits payable to you;
- C. The amount of the fee that the representative may charge and collect; and
- D. An explanation that, within 15 days after the date of receiving the notice, you, your representative, or the decision maker may ask us to review the amount of the fee.

2018.6. If the determination or decision on the claim is unfavorable or SSA does not approve the fee agreement, how can a representative charge a fee?

If the determination or decision on the claim is unfavorable or we do not approve the fee agreement, the representative must file a fee petition if he or she wishes to charge and collect a fee.

2018.7. When must the fee petition be filed?

If the representative elects to use the fee petition process, he or she must file a petition with us after completing his or her services on a claim. The petition for a fee for services rendered should be submitted as soon as possible after all proceedings is complete.

2018.8. Does the claimant receive a copy of the fee petition?

Yes, the representative must also send a copy of the fee petition to you.

2018.9. Where can the fee petition form be obtained?

Any Social Security office has a form available, listing all the required information to petition for a fee.

2018.10. When does SSA set the fee?

When we receive the petition from the representative stating the amount of the fee requested and giving a detailed description of services rendered with the amount of time spent on each service, we will set the amount of the fee.

2018.11. What is the basis for the authorized fee?

The amount of the fee authorized under the fee petition process is determined from several factors, including, but not limited to:

- A. The extent and type of services the representative performed;
- B. The complexity of the case; and
- C. The amount of time the representative spent on the case.

2018.12. What information does SSA provide about the fee?

We notify both you and your representative of the fee authorized under the fee petition process, and give a complete explanation of how we determined the amount of the fee.

2018.13. Can the claimant request a review of the fee?

You or your representative may request a review of the fee determined under a fee petition within 30 days after receipt of the notice.

2019. Direct payment of authorized fee to attorney.

2019.1. When does SSA authorize direct payments to an attorney?

If you are represented by an attorney and your claim is for old age, survivors, or disability insurance benefits (Title II benefits), we withhold 25 percent of past-due benefits. We certify for direct payment to the attorney the lesser of the amount of the authorized fee or 25 percent of past-due benefits.

2019.2. Does SSA pay all fees directly?

No. We assume no responsibility for the payment of any fees if the representative is not an attorney or the claim is for SSI benefits.

2019.3. When does SSA pay the fee?

We will not pay an authorized fee to an attorney under the fee agreement process before the 15-day period for requesting review of the fee amount ends. If you, your attorney, or the decision maker requests review within the time limit, we will not pay the attorney until we have completed the review and notified the parties of the determination on review.

2019.4. How does an attorney receive direct payment if there is no fee agreement?

If there is no fee agreement in the case or we disapproved a fee agreement, the attorney must file a fee petition or notice of intent to submit a fee petition with us in order to receive direct payment of a fee from past-due benefits. The petition or notice must be filed within 60 days of notification of a favorable determination, i.e., the Award Notice.

2019.5. If the claimant has deposited a fee into an escrow account, what must the attorney do to receive payment?

When you and an attorney have a trust or escrow agreement (to assure payment of an authorized fee), the attorney must identify and disclose the amount of the trust/escrow account when he or she files a fee agreement or petitions us for a fee. The attorney must also disclose any payment(s) toward this fee that may have come from a source other than you. We reduce direct payment to the attorney by any amount you deposited into a trust/escrow account and any payments toward the fee from some other source.

2019.6. What must the attorney do if the total amount of the authorized fee cannot be certified?

If the total amount of the authorized fee cannot be certified for direct payment out of past-due benefits, the attorney must look to you and any auxiliary beneficiaries for the balance.

2019.7. If a Federal court rules in favor of a claimant, what fee may an attorney collect?

If a Federal court rules in your favor, the court may allow, as part of its judgment, a reasonable fee to an attorney who represented you in court. The fee allowed by the court cannot exceed 25 percent of you and your family's Title II past-due benefits resulting from the favorable judgment. We may certify the amount of the fee allowed by the court for payment directly to the attorney out of Title II past-due benefits.

CHAPTER 21

SUPPLEMENTAL SECURITY INCOME

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INTRODUCTION

2100. What is the Supplemental Security Income (SSI) program?

Supplemental Security Income (SSI) is a cash assistance program funded and administered by the Federal Government. The program is authorized by Title XVI (Supplemental Security Income for the Aged, Blind, and Disabled) of the Social Security Act.

Beginning in January 1974, SSI replaced the Federal/State matching grant program of adult assistance to the aged, blind, and disabled. Under SSI, there is no minimum age limit for establishing eligibility based on blindness or disability.

2101. Who administers the SSI program?

The Social Security Administration (SSA) administers the SSI Program. Local Social Security offices (see §1505, §1507 and §1513) handle applications.

2102. Purpose and basic principles.

2102.1. What is the purpose of SSI?

The basic purpose of SSI is to assure a minimum level of income to people who are aged, blind, or disabled and who have limited income and resources.

2102.2. What are the basic principles of SSI?

There are several basic principles under the SSI program:

- A. Payments are to be made to aged, blind, and disabled people whose income and resources are below specified amounts. This provides objective, measurable standards for determining your eligibility and the amount of payment;
- B. Title XVI determines:
 - 1. Your right to SSI benefits;
 - 2. Your benefit amount; and
 - 3. The conditions under which you are eligible.If you disagree with our decision on your case, you can obtain an administrative review of the decision. If you are still not satisfied, you may take court action.
- C. SSI benefits are paid under conditions that protect your dignity as much as possible. We do not place restrictions on how you spend your SSI benefits.
- D. The eligibility requirements and the Federal income floor are identical everywhere the program operates (see §2103). This

provides assurance of a minimum income that States and the District of Columbia may choose to supplement.

- E. Although some of your earned income is counted against the SSI income limit, benefit amounts are not reduced dollar-for-dollar as the result of income from work. Thus, you are encouraged to work if you can. (See §§2173-2179 for a discussion of work incentives.) Blind and disabled recipients, if they are capable, are referred to the appropriate State vocational rehabilitation agencies for services to help them enter the labor market. (See §2176 for more information on work incentives for the blind and disabled.)

2103. Where does the SSI program operate?

The SSI program operates in the 50 States, the District of Columbia, and the Northern Mariana Islands. The program also covers blind or disabled children of military parents stationed abroad and certain students studying outside the U.S. for a period of less than one year.

2104. When are SSI benefits paid?

SSI benefits are normally paid on the first day of the month they are due. For example, benefits for August are paid on August 1. (See §§2180-2188 for more information on payments.) It is important to project eligibility and to estimate future income and resources as accurately as possible. We identify and correct errors in payments due to inaccurate estimates when we reassess your eligibility.

2105. How are SSI benefits financed?

SSI benefits are financed from the general funds of the United States Treasury. They are not paid out of the Social Security or Medicare trust funds. States that supplement the Federal benefits make these payments from State funds.

2106. State supplementation of basic SSI benefits.

2106.1. Can states supplement basic SSI benefits?

States may supplement the basic SSI benefits as explained in §2181. In addition, any State may make an agreement with us to administer its supplementation program. We would pay the State supplementary amounts along with the basic SSI benefits. Each month, we charge the State an administration fee for every State supplementary payment issued during that month.

2106.2. What is the administration fee if a State asks SSA to administer its SSI supplementation program?

For fiscal year 2001, the fee is \$5 per payment. The rate will remain \$5 per payment until we decide upon an appropriate rate for later years.

2107. Medicaid.

2107.1. Can SSA make eligibility decisions for the States?

Under Section 1634 of the Social Security Act, some States can contract to have us make Medicaid (see §2309) eligibility decisions. In these States, the SSI application serves as an application for Medicaid.

2107.2. What roles do the States play in administering Medicaid?

The States are responsible for sending notices and issuing Medicaid cards or coupons based on information given to them by the State data exchange (SDX) system.

2107.3. What if SSA does not make Medicaid decisions in a certain State?

If we do not make Medicaid eligibility decisions in a certain State, local Social Security offices advise applicants who have questions about Medicaid to visit their local Medicaid office.

2108. Food stamps.

2108.1. What are food stamps?

Food stamps are coupons, issued by the States under the Food Stamp Act of 1977, as amended. They are used to assist SSI recipients in the purchase of food and other necessary household items.

2108.2. How does a SSI applicant/recipient apply for food stamps?

Social Security offices notify you as a SSI applicant/ recipient of the benefits under the food stamp program and make a food stamp application available to you. Social Security offices can also take your food stamp application if:

- A. Your household is potentially eligible for SSI;
- B. You are not receiving food stamps; and
- C. You do not have a pending food stamp application.

Food stamp applications may be taken with initial SSI claims or upon redetermination. You have the choice of applying at a local Social Security office or at a State food stamp office.

2108.3. How is food stamp eligibility determined?

Food stamp eligibility is based on your household circumstances, not on your individual circumstances. Eligibility for food stamps is determined by the food stamp agency.

For food stamp purposes, a SSI household is a household in which all members are either receiving SSI or have a pending SSI application. Social Security offices forward the food stamp applications and any

supporting documents to the local food stamp offices within one day of taking the application.

2108.4. Do you live in California?

If you are a SSI applicant living in California, you receive a cash payment with your supplementary payment instead of food stamps. States that administer food stamps in this manner are called food stamp “cash-out” States.

2109. Were you eligible for assistance under a Federal/State matching grant program for the aged, blind, or disabled in December 1973?

The SSI program went into effect in January 1974. If you were eligible for assistance under one of the prior Federal/State matching grant programs for the aged, blind, or disabled in December 1973, you were “converted” to SSI. Congress wanted to be sure that you were not disadvantaged by your conversion to SSI. Therefore, it enacted certain special provisions applicable only to you as a converted recipient. These special provisions are called “grandfather” provisions and are discussed in §2172.

2110. SSI definitions.

2110.1. Who is an “eligible individual”?

An “eligible individual” is a person who files an application and meets all of the eligibility criteria in §§2111-2114.

2110.2. Who is an “eligible spouse”?

An “eligible spouse” is an eligible individual's husband or wife who meets all of the eligibility criteria in §§2111-2114 and is living in the same household with the person.

2110.3. Who is an “eligible couple”?

An “eligible couple” is an eligible individual and his or her eligible spouse.

2110.4. Who is an “ineligible spouse”?

An “ineligible spouse” is an eligible individual's husband or wife who does not meet all of the criteria for SSI eligibility.

2110.5. Who is an “essential person”?

An “essential person” is an **ineligible** person:

- A. Who lives in the same household as the eligible individual or couple; and
- B. Whose needs were taken into account in computing the amount payable to a recipient prior to conversion from one of the State adult assistance programs. (See §2172.)

2110.6. Who is a “child”?

For the purposes of evaluating income and resources, a “child” is a person who is:

- A. Unmarried;
- B. Not the head of a household;
- C. Either:
 - 1. Under age 18; or
 - 2. Under age 22 and a student, regularly attending an educational or vocational training institution in a course of study designed to prepare him or her for a paying job.

2110.7. Who is a “sponsor”?

A “sponsor” is an individual who signs an affidavit of support or similar agreement on behalf of an alien.

ELIGIBILITY

2111. What are the general eligibility requirements for SSI?

To be eligible for SSI, you must meet all of the eligibility criteria described in §§2111-2114.

No one (except for converted recipients described in §2109 and §2172) can become eligible for SSI benefits without filing an application.

2112. What are the categories of eligibility?

In order to be eligible for SSI benefits, you must fit one of the following three categories:

- A. Aged—An “aged” person is someone who is age 65 or older;
- B. Blind—A “blind” person is someone whose vision, with use of a correcting lens, is 20/200 or less in the better eye or who has tunnel vision of 20 degrees or less. There is no minimum age limit (for converted blind recipients, see §2172); or
- C. Disabled—A “disabled” person age 18 or older is someone who meets the Social Security disability insurance program definition of disability. That is, he or she:
 - 1. Must be unable to engage in substantial gainful activity (SGA) due to a medically determinable physical or mental impairment; and
 - 2. The impairment can be expected to last for at least 12 months in a row or result in death.

There is no minimum age limit. A person under age 18 is eligible if he or she meets conditions (1) and (2) above. (For converted recipients, see §2172.)

2113. Eligibility criteria based on need.

2113.1. Does your income amount determine whether you are eligible for SSI?

Yes. In order to receive SSI benefits, you cannot have monthly countable income more than the current Federal benefit rate (FBR). The FBR for an eligible couple is approximately one and one half as much as that for an individual. These amounts are set by law and are subject to annual increases based on cost-of-living adjustments. As of January 2001, the FBR for an individual is \$530 and that for an eligible couple is \$796. However, individual States may supplement these amounts.

(See §§2128-2147 for more information on how income affects both eligibility and payment amount.)

2113.2. Does the amount of real or personal property you own determine whether you are eligible for SSI?

Yes. In order to receive SSI benefits, you cannot own countable real or personal property (including cash) in excess of a specified amount at the beginning of each month. For an individual with an eligible or ineligible spouse, the applicable limit is one and one-half times as much as that for an individual without a spouse. These limits are set by law, and they are not subject to regular cost-of-living adjustments. But they are subject to change. The limits for January 2001 are \$2,000 for an individual and \$3,000 for a couple.

Note: Resources do not affect payment amount. (See §§2148-2166 for more information on how resources affect eligibility.)

2114. What are other requirements for SSI eligibility?

In addition to the categorical and need criteria described above, you must file an application and meet all of the following eligibility requirements:

- A. Be a resident of one of the 50 States, the District of Columbia, or the Northern Mariana Islands, or be a child who is a U.S. citizen and lives outside the U.S. with a parent in the U.S. armed forces;
- B. Be a citizen of the U.S., or an alien in an immigration category qualified to receive Federal benefits and meet certain additional requirements (see §2115);
- C. Not be a resident of a public institution throughout a month (see §2121);

- D. Not be absent from the U.S. for a calendar month unless:
 - 1. You are a child who is a U.S. citizen and lives outside the U.S. with a parent in the U.S. armed forces; or
 - 2. You are a student who is temporarily abroad for the purpose of conducting studies, (see §2116);
- E. File for any other benefits for which you are potentially eligible (see §2117);
- F. Not refuse, without good cause, vocational rehabilitation services if you are blind or disabled (see §2118);
- G. Accept appropriate treatment, if available, for drug addiction or alcoholism;
- H. Not be a fugitive felon (see §2119); and
- I. Not be violating a condition of parole or probation (see §2120).

2115. Citizenship/alien status.

2115.1. How does an individual become a U.S. citizen?

You are a U.S. citizen either by birth or by naturalization (see §1725).

2115.2. How is an alien eligible for SSI benefits?

A qualified alien can be eligible for SSI benefits if he or she meets one of the categories listed in “A” through “G” below:

- A. Who is lawfully admitted for permanent residence (LAPR), **and**:
 - 1. Has 40 qualifying quarters of creditable work; or
 - 2. Is a veteran, active duty member of the U.S. military or a spouse or dependant child of a veteran or member of the U.S. military; or
 - 3. Was lawfully residing in the United States on 8/22/96 and is blind or disabled; or
 - 4. Is lawfully residing in the United States and was receiving SSI on 8/22/96; or
 - 5. Was granted one of the alien classifications listed below within the last seven years:
 - a. Refugee under section 207 of the INA;
 - b. Asylee under section 208 of the INA;
 - c. Alien whose deportation is being withheld under section 243(h) of the INA or whose removal has been withheld under section 241(b)(3) of the INA;
 - d. Cuban/Haitian entrant under one of the four categories in Section 501(e) of the Refugee Education and Assistance Act of 1980; or

e. Amerasian immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988.

B. Refugee under section 207 of the INA **and**:

1. Is a veteran, active duty member of the U.S. military, or a spouse or dependant child of a veteran or member of the U.S. military; or
2. Was lawfully residing in the United States on 8/22/96 and is blind or disabled; or
3. Is lawfully residing in the United States and was receiving SSI on 8/22/96; or
4. Was granted refugee status under section 207 Of the INA within the last seven years.

C. Granted asylum under section 208 of the INA **and**:

1. Is a veteran, active duty member of the U.S. military or a spouse or dependant child of a veteran or member of the U.S. military; or
2. Was lawfully residing in the United States on 8/22/96 and is blind or disabled; or
3. Is lawfully residing in the United States and was receiving SSI on 8/22/96; or
4. Was granted asylum within the last seven years.

D. Deportation withheld under section 243(h) of the INA or removal withheld under section 241(h)(3) of the INA **and**:

E. Is a veteran, active duty member of the U.S. military or a spouse or dependant child of a veteran or member of the U.S. military; **or**:

1. Was lawfully residing in the United States on 8/22/96 and is blind or disabled; or
2. Is lawfully residing in the United States and was receiving SSI on 8/22/96; or
3. Deportation or removal was withheld within the last seven years.

F. Conditional entrant under section 203(a)(7) of the INA **and**:

1. Is a veteran, active duty member of the U.S. military or a spouse or dependant child of a veteran or member of the U.S. military; or
2. Was lawfully residing in the United States on 8/22/96 and is blind or disabled; or

3. Is lawfully residing in the United States and was receiving SSI on 8/22/96.
- G. Paroled into the U.S. for one year or more under section 212(d)(5) of the INA **and**:
1. Is a veteran, active duty member of the U.S. military or a spouse or dependant child of a veteran or member of the U. S. military; or
 2. Was lawfully residing in the United States on 8/22/96 and is blind or disabled; or
 3. Is lawfully residing in the United States and was receiving SSI on 8/22/96; or
 4. Was granted Cuban/Haitian entrant status within the last 7 years under 501(e) of the Refugee Education and Assistance Act of 1980.
- H. Cuban/Haitian entrant under Section 501(e) of the Refugee Education and Assistance Act of 1980 **and**:
1. Is a veteran, active duty member of the U.S. military or a spouse or dependant child of a veteran or member of the U.S. military; or
 2. Was lawfully residing in the United States on 8/22/96 and is blind or disabled; or
 3. Is lawfully residing in the United States and was receiving SSI on 8/22/96; or
 4. Was granted Cuban/Haitian entrant status within the last seven years.
- I. Battered spouse or child who petitioned for status as a lawfully admitted permanent resident under section 204(a)(1)(A)(i)-(iv) or 204(a)(1)(B)(i)-(iii) of the INA, or suspension of deportation under section 244(a)(3) or 240A(b)(2) of the INA, **and**:
1. Is a veteran, active duty member of the U.S. military or a spouse or dependant child of a veteran or member of the U.S. military; or
 2. Was lawfully residing in the United States on 8/22/96 and is blind or disabled; or
 3. Is lawfully residing in the United States and was receiving SSI on 8/22/96.

If the individual is not a “qualified alien” (see categories A-H, above), then he/she is considered to be a “nonqualified alien.” Certain nonqualified aliens who were receiving SSI as of 8/22/96 may be eligible for SSI.

2116. Absence from the U.S.

2116.1. Are you still eligible for SSI benefits if you leave the U.S.?

You are not eligible for SSI benefits for the month or months that you are:

- A. Outside the U.S. for a full calendar month or more; and
- B. Not a child living outside the U.S. with a parent in the military service or a student temporarily abroad for the purpose of studying.

2116.2. When are you considered “back” in the U.S.?

If you have been outside the U.S. for 30 days in a row, you are not considered “back” until you have spent 30 days in a row in the U.S.

2116.3. When does your eligibility begin again after you have been outside of the U.S.?

After an absence of 30 days in a row, your SSI eligibility may resume effective with the day following the 30th day of your continuous presence in the U.S. You must continue to meet all other eligibility criteria.

2116.4. Can a blind or disabled child still be eligible for SSI benefits while living outside the U.S.?

A blind or disabled child may be eligible for SSI benefits while outside the U.S. if the child:

- A. Is a U.S. citizen;
- B. Lives with a parent who is a member of the U.S. armed forces assigned to permanent duty outside the U.S.; and
- C. Was eligible to receive SSI benefits in the month before the parent reported for duty outside the U.S.

2116.5. Can a student still be eligible for SSI benefits while living outside the U.S.?

A student of any age may be eligible for SSI benefits while temporarily outside the U.S. if:

- A. The student is conducting studies that are not available in the U.S.;
- B. The student is sponsored by an educational institution in the U.S.;
- C. The studies abroad are designed to enhance the student's ability to get gainful employment; and
- D. The student was eligible to receive a SSI benefit for the month before the first full month outside the U.S.

2117. Filing for other benefits.

2117.1. What other benefits do you need to apply for before you can be eligible for SSI?

SSI is a program of last resort. Therefore, you must file for any other benefits for which you may be eligible. This means benefits such as Social Security benefits, private pensions, etc., which share all of the following characteristics:

- A. Require an application or similar action;
- B. Entail conditions for eligibility;
- C. Provide either periodic or one-time payments; and
- D. Are sources of income that reduce SSI benefits.

2117.2. How do you know of other benefits for which you could be eligible?

We must provide you with written notice of potential eligibility for other benefits and of your requirement to “take all appropriate steps” to pursue these benefits. You have 30 days from receipt of the notice to file for the benefits involved.

2117.3. What does it mean to “take all appropriate steps” to pursue benefits?

“Taking all appropriate steps” to pursue other benefits for which you could be eligible means:

- A. Applying for the benefit;
- B. Providing the other payment source with any information necessary to establish eligibility; and
- C. Agreeing to receive the other benefits if you are found eligible.

Note: It is not necessary for an individual to pursue a claim for other benefits through an appeals process.

2118. Referral for vocational rehabilitation services.

2118.1. Who is referred for vocational rehabilitation?

We refer blind or disabled persons under age 65 to State Agencies for appropriate vocational rehabilitation services.

2118.2. Are you eligible for SSI if you do not accept vocational rehabilitation?

No. If you refuse vocational rehabilitation services without good cause, you are not eligible to receive SSI benefits.

2119. Are fugitive felons eligible for SSI?

No. Fugitive felons are not eligible for SSI benefits. You will not receive SSI payments if, during any part of the month, you are fleeing to avoid:

- A. Trial on a criminal charge of felony*;
- B. Jail or prison after conviction of a felony*; or
- C. Custody after conviction of a felony*.

* In New Jersey, a high misdemeanor.

2120. Are probation and parole violators eligible for SSI?

No. Probation and parole violators are not eligible to receive SSI benefits. You may not receive SSI payments for any month during which you are violating a condition of probation or parole imposed under Federal or State law.

2121. Institutionalization.

2121.1. Are you eligible for SSI if you are institutionalized?

Institutionalization affects your eligibility and your benefit rate. If you are a resident of a public institution for a full calendar month, you are not eligible for SSI unless one of the following exceptions applies:

- A. The public institution is a medical treatment facility and Medicaid pays more than 50 percent of the cost of care. In the case of a child under age 18, Medicaid and/or private health insurance pays more than 50 percent of the cost of care;
- B. You are living in a publicly operated community residence that serves no more than 16 residents. Such a facility must provide an alternative living arrangement to a large institution and be residential (i.e., not a correctional, educational, or medical facility);
- C. The public institution is a public emergency shelter for the homeless. Such a facility provides food, a place to sleep, and some services to homeless individuals on a temporary basis. Payments to a resident of a public emergency shelter for the homeless are limited to no more than six months in any nine-month period;
- D. You are in a public institution primarily to receive educational or vocational training. To qualify, the training must be an approved program and must be designed to prepare you for gainful employment;
- E. You were eligible for SSI under one of the special work incentive provisions described in §§2178 and 2179 in the month before the first full month you live in a medical or psychiatric institution. The institution agrees to permit you to retain benefit payments. Payment may be made for the first full month of institutionalization and the next month; or
- F. A physician certifies that:

1. Your stay in a medical facility is not likely to last more than three months; and
2. You need to continue to maintain and provide for the expenses of your home to which you may return.

Payments may be made for up to the first three full months of institutionalization.

2121.2. What is the maximum payment while you are institutionalized?

In general, payment is limited to a maximum of \$30 per month (minus any countable income) when:

- A. You are a resident throughout a month in a public or private medical treatment institution; and
- B. Medicaid pays over 50 percent of the cost of care for that month. In the case of a child under age 18, Medicaid and/or private health insurance pays more than 50 percent of the cost of care.

As with other benefits, States can supplement the \$30 payment.

2121.3. Are there exceptions to the maximum payment limit?

There are two exceptions to the maximum payment limit:

- A. If you meet the requirements of (E) in 2121.1. above, you may receive full payment for the first two full months of institutionalization; or
- B. If you meet the requirements of (F) in 2121.1. above, you may receive full payment for the first three full months of institutionalization.

2121.4. What is the prerelease program?

The prerelease program helps institutionalized individuals return to community living. Some individuals are medically ready to be released from an institution, but cannot financially support themselves. The prerelease program allows you to apply for SSI payments and food stamps several months before your anticipated release so your benefits can begin quickly after you leave the institution.

2121.5. How can you participate in the prerelease program?

A formal prerelease agreement can be developed between an institution and the local Social Security office. However, you can file an application for SSI under the prerelease procedures even if your institution does not have a formal agreement.

2122. Marriage.

2122.1. How does marriage affect SSI benefits?

Marriage helps determine whether:

- A. There is an eligible couple (rather than two eligible individuals);
- B. The rules for deeming income and resources apply if a spouse is **not** eligible (see §2167); or
- C. An individual under age 22 is a child who qualifies for special income exclusions.

2122.2. When are a man and woman considered married?

A man and woman are married for SSI purposes if:

- A. They are living in the same household and are married under the laws of their State;
- B. They are holding themselves out as husband and wife to the community in which they live; or
- C. One is entitled, as the spouse of the other, to Social Security benefits.

2122.3. When does SSA evaluate the existence of a marriage?

We generally evaluate the existence of a marriage as of the first day of a month. However, there are exceptions:

- A. If both members of an eligible couple file an application in the same month, we evaluate couple status for that month on the first day of the month following the date the application is filed; and
- B. If both members of a formerly eligible couple seek reinstatement as a couple in the same month, we evaluate couple status for that month as of the latest request for reinstatement.

2122.4. Who is considered the spouse if marriage status changes?

The spouse you were living with at the beginning of a month is your spouse for SSI purposes, regardless of changes later in the month. For example, a “holding-out” spouse with whom you are living takes precedence over a legally married spouse from whom you are separated.

2123. Eligible couples.

2123.1. What is the income and resources limit for an eligible couple?

The income and resources limits for an eligible couple are higher, but less than twice the individual's limit. The couple's eligibility is

established by comparing their **combined** countable income and resources with the applicable couple's limits.

2123.2. How is a couple's benefit computed?

An eligible couple's federal benefit is the difference between:

- A. The **combined** countable income of both members; and
- B. The couple's FBR.

Whatever benefit is due an eligible couple is usually paid in two equal payments, one to each spouse.

2123.3. When does "couple" status end?

The members of an eligible couple continue to be treated as such until:

- A. The marriage ends through death, divorce, or annulment; or
- B. The members of the couple begin living apart.

2123.4. How does SSA recognize a couple who shares a room in an institution?

We consider the members of an eligible couple who share a room in an institution as separated. We treat them as two eligible individuals for purposes of determining eligibility and payment amount.

2124. Eligibility under more than one category.

2124.1. Can you qualify for benefits under more than one of the eligibility categories?

It is possible for you to qualify for SSI under more than one of the three eligibility categories of aged, blind, or disabled. For example, you may be both blind and disabled, or you may be over age 65 and blind or disabled.

2124.2. How are Federal SSI benefits affected if you fit more than one of the eligibility categories?

The Federal SSI benefit rate is the same for all categories. However, because of differences in income/resources exclusions, a blind or disabled individual may receive a higher SSI benefit than an aged person. However, the individual age 65 or older must have an established onset of blindness or disability before the month he or she turned age 65 in order to qualify for the higher exclusions.

2124.3. How are Federally Administered State Supplementation benefits affected if you fit more than one of the eligibility categories?

States with Federally administered supplementation programs may vary their supplementation amounts by category. For example, if a person was blind before age 65 but was age 65 or older at the time of filing, he or she may choose to receive a higher State supplement based

on blindness, if that option is provided. However, such an individual's Federal SSI payment is based on age 65 and not on blindness.

2125. Continuing eligibility.

2125.1. Why does SSA reevaluate eligibility for SSI?

We periodically reevaluate the eligibility of each SSI recipient to insure that eligibility continues and that payments are in the proper amount.

2125.2. What is covered in the reevaluation?

Except for individuals turning age 18, reevaluation covers all factors of eligibility except age, citizenship, and continuing disability or blindness. Every individual eligible based on a disability in the month before the month of turning 18 is subject to a reevaluation of disability based on the initial adult standards.

2125.3. How often does SSA reevaluate eligibility?

The length of time between scheduled reevaluations varies depending on the likelihood that your situation may change in a way that affects your eligibility and/or payment amount.

2125.4. What is your role in a reevaluation?

We contact eligible individuals and couples for the reevaluation. It may be conducted by mail, telephone, or personal interview. You will be asked to provide the same kind of information that you gave when you applied. We may also ask you to provide evidence on factors subject to change, such as income, resources, living arrangements, etc.

2126. Recipient reporting requirements.

2126.1. Do you need to report events that affect your SSI benefits?

You must report events or changes in circumstances if they affect your eligibility or payment amount. You must make the report within 10 calendar days after the end of the month the event or change occurred.

2126.2. What happens if you do not report an event?

If you do not report an event that affects your SSI benefits, there may be a penalty deduction in later benefit payments as follows:

- A. \$25 penalty for the first time;
- B. \$50 penalty for the second time; and
- C. \$100 for each subsequent failure.

We do not impose a penalty if you were without fault or had good cause for not reporting an event.

2126.3. What types of events must be reported?

You must report such matters as:

- A. Change in amount of earned and unearned income;
- B. Change of residence;
- C. Marriage, divorce, or separation;
- D. Absence from the U.S.;
- E. Improvement in the condition that created your disability;
- F. Changes in income or resources of beneficiaries;
- G. Changes in income or resources of individuals whose income and resources are attributed to you;
- H. Eligibility for other benefits;
- I. Change in school attendance;
- J. Change in composition of the household;
- K. Change in citizenship or alien status;
- L. Becoming a fugitive felon; or
- M. Violating a condition of probation or parole.

2127. Fraud.

2127.1. What are the penalties for fraud?

Penalties for fraud include possible fines and imprisonment.

2127.2. What actions are considered fraudulent?

Penalties are imposed if a person with intent to defraud:

- A. Willfully and knowingly deceives, misleads, or threatens any claimant, prospective claimant, or beneficiary regarding benefits by word, circular, letter, or advertisement;
- B. Knowingly charges or collects, whether directly or indirectly, any fee more than the maximum fee set by the Commissioner of Social Security;
- C. Makes false statements or misrepresentations in applying for benefits;
- D. Makes false statements or misrepresentations of material facts at any time if for use in determining benefit rights;
- E. Conceals, or fails to reveal, information about events affecting initial or continued right to benefits or the amount of payment; or
- F. Converts payments received on behalf of another to a use other than for the use and benefit of the eligible person.

INCOME

2128. How does income affect SSI benefits?

The amount of your income determines your eligibility for SSI and the amount of your benefit. Generally, the more income you earn the lower your SSI benefit. If you have too much income, you are not eligible for SSI benefits. However, not everything you get is considered income and not all income counts in determining your eligibility.

In certain situations, other people are expected to share financial responsibility for an individual. In these situations, the income (and resources) of others are considered in determining the individual's eligibility and payment amount (see §2167).

2129. How is income defined for SSI purposes?

Income is anything you receive during a calendar month and used to meet your needs for food, clothing, or shelter. It may be in cash or in-kind. In-kind income is not cash; it is food, clothing, shelter, or something you can use to get food, clothing, or shelter.

2130. What is NOT income for SSI purposes?

Certain things you receive are not income, even if they have value. Among them are:

- A. Medical care and services, including room and board, provided by anyone while you are living in a medical treatment facility such as a hospital or nursing home;
Note: Cash provided by an individual, a non-governmental medical services program, or health insurance **is income** if it is not reimbursement for, or restricted to the future purchase of, program-approved services.
- B. Social Services;
Note: Cash provided by an individual or a non-governmental social services program **is income** if it is not reimbursement for, or restricted to the future purchase of, program-approved services.
- C. Receipts from the sale, exchange, or replacement of a resource. These receipts are simply resources that have changed their form. This includes any cash or in-kind item provided to replace or repair a resource that has been lost, damaged, or stolen (see §2138);
- D. Income tax refunds;
- E. Payments by credit life or credit disability insurance;
- F. Proceeds of a loan. This includes money you borrow or receive as repayment of a loan;

- G. Money paid by someone else directly to a supplier on your behalf. However, goods or services you receive as a result of the payments may be income even if the third-party payments themselves are not;
- H. Replacement of income already received, e.g., replacement of a stolen paycheck;
- I. Assistance you receive to protect your residence from bad weather, such as insulation or storm doors; and
- J. Any item (other than an item of food, clothing, or shelter) that would be an excluded non-liquid resource (see §2156) if you kept it.

2131. Countable income.

2131.1. What is “countable income”?

Countable income is the amount left over after:

- A. Eliminating from consideration all items that are not income; and
- B. Applying all appropriate exclusions to the items that are income.

Countable income is determined on a calendar month basis. It is the amount actually subtracted from the FBR to determine your eligibility and to compute your monthly benefit amount. (See §2132.)

2131.2. Why is it important to distinguish earned income from unearned income?

It is important to distinguish earned income from unearned income because not as much earned income is countable.

2132. How income is counted.

2132.1. How does SSA count income?

We count income by determining countable income for each calendar month of eligibility. This means looking at income you received (or deemed to have received, see §2167) in a given month. We then apply exclusions appropriate to that month's income.

2132.2. What happens if countable income is more than the FBR?

If your countable income is more than the FBR, you are not eligible for a Federal benefit. Since SSI payments are made on the first day of a month for that same month, we need to use an estimate of countable income to project your eligibility for that month.

2132.3. When does SSA review the estimates of countable income?

We review the estimates (and revise them, if necessary) whenever there is a report of change or a redetermination.

2132.4. What month is used to compute your benefit amount?

If you are eligible for a particular month, we usually compute your SSI benefit amount for the month using your countable income from two months before the current month. This is called retrospective monthly accounting (see §2183).

2133. When income is counted.

2133.1. When does SSA count your income?

Generally, we count both earned and unearned income in the month of actual or “constructive” receipt, whichever is earlier.

2133.2. What does “constructive” receipt mean?

“Constructive” receipt means that income is credited to your account or set aside for your use, whether or not you actually receive it in hand. (See §1302.) For example, if an individual asks an employer to hold his or her regular July 15 paycheck pending return from vacation on August 3, the wages are income in July. Similarly, a month's income includes certain amounts withheld at the source. For example, amounts deducted from a payment to satisfy a garnishment or to make certain payments, such as insurance premiums, are considered income in the month the withholding occurs.

Note: There is an exception. Net earnings from self-employment are determined on an annual basis and allocated equally over all 12 months of the tax year.

2134. What is earned income?

Earned income is:

- A. Wages paid or constructively paid (as defined in §1302) for services you perform as an employee;
- B. Net earnings from self-employment estimated for a current year on the basis of volume of business, past experience, etc.;
- C. Payments for participating in a sheltered workshop or work activities center program;
- D. Sickness or temporary disability payments received within the first six months of stopping work; and
- E. Royalties you earned in connection with any publication of your work and any honoraria received for your services.

Earned income may be paid in cash or in-kind. If it is in-kind, its full current market value is the amount used to determine your countable income.

2135. What are the earned income exclusions?

In figuring countable earned income, certain exclusions are authorized by other Federal laws and by Title XVI of the Social Security Act. Countable earned income can never be less than zero, nor can any earned income exclusion apply to unearned income.

We apply earned income exclusions in the following order:

- A. Exclusions authorized by Federal laws other than Title XVI;
- B. The full amount of any earned income tax credit payments;
- C. Up to \$10 per month of earned income if received infrequently or irregularly. For example, if the income is received only once during a calendar quarter or if its receipt cannot reasonably be expected;
- D. Up to \$400 in a month (but no more than \$1,620 per year) for a blind or disabled child who is a student regularly attending school;
- E. Any portion of the \$20 per month general income exclusion that is not used against unearned income in the same month;
- F. \$65 of earned income;
- G. Impairment-related work expenses of a disabled (not blind) individual who:
 1. Is under age 65; or
 2. Received SSI based on a disability for the month before turning age 65;
- H. One-half of the month's remaining earned income;
- I. Any expenses reasonably typical of the earning of income for a blind (not disabled) individual who:
 1. Is under age 65; or
 2. Received SSI because of blindness for the month before turning age 65; and
- J. Any earned income used to fulfill an approved plan for achieving self-support in the case of a blind or disabled individual who:
 1. Is under age 65; or
 2. Received SSI based on blindness or disability for the month before turning age 65.

Note: An eligible couple gets the same income exclusions as an eligible individual. However, the benefit rate is higher for an eligible couple.

2136. What is “unearned income”?

“Unearned income” is all income that is not earned. Some common types of unearned income are:

- A. In-kind support and maintenance (food, clothing, or shelter) given to an individual or received by an individual because someone else paid for it (see §§2140-2142);
- B. Private pensions and annuities;
- C. Periodic public payments such as Social Security benefits, Railroad Retirement benefits, Department of Veterans Affairs pension and compensation payments, civil service annuities, workers' compensation, unemployment compensation, and payments based on need involving Federal funds;
- D. Life insurance proceeds and other death benefits, to the extent that the total amount is more than the expenses of the deceased person's last illness and burial paid by the individual;
- E. Gifts and inheritances;
- F. Support and alimony payments in cash or in-kind;
- G. Prizes and awards;
- H. Dividends and interest;
- I. Rents and royalties (except those royalties defined as earned income); and
- J. Certain payments not considered wages for Social Security purposes:
 1. In-kind payments to agricultural and certain domestic workers;
 2. Tips under \$20 per month;
 3. Jury fees;
 4. Money paid to individuals who are residents, but not employees, of institutions; and
 5. Military pay and allowances, except basic pay.

2137. What are the unearned income exclusions?

As with earned income, certain unearned income exclusions are authorized by other Federal laws as well as by Title XVI. Countable unearned income can never be less than zero. However, there is one unearned income exclusion that can be applied to earned income (see (M) below). Unearned income exclusions are applied in the following order:

- A. Exclusions authorized by Federal laws other than Title XVI. These include, but are not limited to, exclusion of most benefits provided under the:
 1. Food Stamp Act (value of food coupons);
 2. National School Lunch and Child Nutrition Acts;

3. Older Americans Act;
 4. National Housing Act (various types of Federal housing assistance);
 5. Agent Orange Product Liability Litigation;
 6. Radiation Exposure Compensation Trust Fund (RECTF);
 7. Japanese-American and Aleutian Restitution Payments; and
 8. Payments to an individual from any source because of his or her status as a victim of Nazi persecution;
 9. Any earnings an individual contributes to his/her TANF Individual Development Accounts, any matching funds, and interest on the earnings and matching funds, and interest on the earnings and matching funds; and
 10. Any matching funds that are retained in a Demonstration Project Individual Development Account;
- B. Any public agency's refund of taxes on real property or food;
- C. Assistance based on need and funded wholly by a State and/or one of its political subdivisions (including Indian tribes). It does not matter whether these payments are made directly to an individual or are paid to someone else on his or her behalf. This exclusion includes all State payments used to supplement SSI;
- D. Any portion of a grant, scholarship, or fellowship used for paying tuition, fees or other necessary educational expenses. However, any amount set aside or actually used for food, clothing, or shelter is not excluded;
- E. Food raised by an individual or by his or her spouse if consumed by the household;
- F. Assistance received under the Disaster Relief and Emergency Assistance Act and assistance provided under any Federal statute because of a catastrophe declared by the President to be a major disaster (see §2138);
- G. Up to \$20 per month of unearned income if received infrequently or irregularly; i.e., if received only once during a calendar quarter from a single source or if its receipt cannot reasonably be expected;
- H. Payments received by certain recipients under the Alaska Longevity Bonus program;
- I. Payments to an individual for providing foster care to a child placed in the individual's home by a qualified agency;
- J. Any interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrangement left to accumulate

and become part of the separately identifiable burial fund (see §2161);

- K. Certain home energy and other needs-based support and maintenance assistance (see §2139);
- L. One-third of support payments made by an absent parent to or for an eligible child;
- M. The first \$20 per month of an individual's total unearned income other than income based on need. Payments are based on need if the recipient's income is a factor in determining eligibility for the payments. (Any portion of this exclusion that cannot be used up against unearned income is applied against earned income received in the same month);
Note: A needs-based payment funded solely by any combination of a State and its political subdivisions (including Indian tribes) is called "assistance based on need" and is excluded totally (see (C) above). A needs-based payment funded wholly or partially by a non-governmental organization or by the Federal Government is called "income based on need." It does not qualify for this \$20 general exclusion; (See §2139 for an exclusion that may apply to assistance provided by nonprofit organizations.)
- N. Any unearned income used to fulfill an approved plan for achieving self-support in the case of a blind or disabled individual who:
 - 1. Is under age 65; or
 - 2. Received SSI based on blindness or disability for the month he or she turned 65;
- O. Federal housing assistance, whether provided directly by the Federal Government or through other entities such as local housing authorities, nonprofit organizations, etc.;
- P. Any interest accrued on (or after April 1, 1990) and left to accumulate as part of the value of an excluded burial space purchase agreement;
- Q. The value of any commercial transportation ticket received as a gift and not converted to cash. This applies to travel among the 50 states, District of Columbia, Puerto Rico, Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands;
- R. Hostile fire pay from the Uniformed Services received in or after October 1993;
- S. Payments received from a State fund to aid victims of crime;

- T. Relocation assistance provided under Title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970;
- U. Austrian Social Insurance payments that are based, in whole or in part, on wage credits received for certain losses suffered before and during World War II;
- V. Payments made by the Dutch Government under the Netherlands Act on Benefits for Victims of Persecution 1940-1945 to individuals who were victims of persecution and suffering from illnesses or disabilities resulting from the persecution.

Note: An eligible couple gets the same income exclusions as an eligible individual, although there is a higher benefit rate for a couple.

2138. Assistance related to disasters.

2138.1. What is considered a “major disaster”?

A “major disaster” is one declared by the President. It is declared for purposes of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (formerly the Disaster Relief Act of 1974).

2138.2. What exclusions apply when there is a major disaster?

When a major disaster occurs, the following exclusions apply:

- A. Support and maintenance you begin receiving within 30 days of the disaster, if the disaster caused you to leave a household that you maintained as your own home. The support and maintenance may be provided in a residential facility or in a private household maintained by another person;
- B. Any assistance provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act or under any other Federal statute because of the catastrophe (e.g., cash to repair or replace the home or other property); and
- C. Any interest earned on assistance payments described under (B) above.

2138.3. What is considered a “personal disaster”?

A “personal disaster” occurs when your resource is lost, damaged, or stolen (e.g., destruction of a home by fire or flood).

2138.4. What exclusions apply when there is a personal disaster?

When a resource is lost, damaged, or stolen, the following rules apply:

- A. You may receive cash to repair or replace the resource, or the resource may be repaired or replaced for you. Neither the cash nor the repair/replacement is income;
- B. Temporary housing provided until your excluded home is repaired or replaced is not income; and
- C. Up to nine months (which can be extended to 18 months for good cause) of interest earned on cash received to repair or replace a non-cash resource is not income.

2139. Can home energy or support and maintenance assistance be excluded from income?

Home energy or support and maintenance (i.e., food, clothing or shelter) assistance you (or any person whose income or living arrangement affects your income) receive may be excluded if:

- A. The appropriate State agency certifies that the assistance is based on need; and
- B. The assistance is provided in one of the following ways:
 - 1. In cash or in-kind by a supplier of home heating fuel or a municipal utility providing home energy;
 - 2. In cash or in-kind by a rate-of-return entity that provides home energy; or
 - 3. In-kind by a private nonprofit organization.

Note: You receive “in-kind” assistance, not cash, when you receive a voucher or a third-party check; or when an organization pays cash directly to a provider (e.g., your landlord).

2140. In-kind income.

2140.1. What is “in-kind income”?

“In-kind income” is income that is not in the form of cash or negotiable instruments. Examples of in-kind income include real property, food, clothing, and occasionally, wages (e.g., room and board as compensation for employment).

2140.2. How is in-kind income valued?

In-kind income that is unearned and directly satisfies the need for food, clothing, or shelter is called “in-kind support and maintenance.” It has special rules for valuation. Any other in-kind income is valued at its current market value.

2141. What is “in-kind support and maintenance”?

“In-kind support and maintenance” means unearned income in the form of food, clothing, or shelter that you receive and someone else pays for.

Shelter includes room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, and sewerage and garbage collection service. You are not receiving in-kind support and maintenance in the form of room or rent if you are paying the amount charged under a business arrangement.

2142. Valuation of in-kind support and maintenance.

2142.1. How is in-kind support and maintenance valued?

There are two rules we use for placing a value on in-kind support and maintenance: the “one-third reduction rule” and the “presumed maximum value rule.” These rules are explained in the subsections below.

2142.2. What is the “one-third reduction rule”?

Under the one-third reduction rule, an amount equal to one-third of the applicable FBR is considered the value of the in-kind support and maintenance.

Note: The \$20 general exclusion does not apply.

2142.3. When does the one-third reduction rule apply?

The one-third reduction rule applies if you:

- A. Live in another person's household throughout a calendar month, except for temporary absences (see §2145); and
- B. Receive both food and shelter from within the household. (See §2143 and §2147 for additional information on the one-third reduction rule.)

2142.4. What is the “presumed maximum value rule”?

Under the presumed maximum value rule, we presume that the value of support and maintenance does not exceed a certain maximum amount (see §2144). However, if you can show that the actual value is lower than the presumed maximum value, we use the lower value to determine your countable income. (See §2147.)

2142.5. When does the presumed maximum value rule apply?

This rule applies in situations when you receive in-kind support and maintenance and the one-third reduction rule does not apply.

2143. One-third reduction rule.

2143.1. How much of the reduction amount applies under the one-third reduction rule?

The value of the one-third reduction (see §2142) applies in full or not at all. If the value of the one-third reduction applies, no other in-kind support and maintenance you receive is considered.

2143.2. What is a “household” under the one-third reduction rule?

A household is your personal place of residence. A commercial establishment, such as a hotel or boarding house, is not a household although one or more households can exist within these establishments. An institution is not a household, and a household cannot exist within an institution.

2143.3. What is “another person's household” under the one-third reduction rule?

You live in another person's household if the person who provides the support and maintenance lives in the same household and is not:

- A. A minor child; or
- B. An ineligible person whose income can be deemed to you.

You are not living in another person's household when:

- A. You or your living-with spouse (or any person whose income can be deemed to you) have an ownership or life estate interest in the home;
- B. You or your living-with spouse (or any person whose income can be deemed to you) are liable to the landlord for payment of any part of the rental charges;
- C. You have been placed in the household under a program of protective care such as foster care or adult care;
- D. You pay at least a pro rata share (see 2143.5. below) of average household operating expenses; or
- E. All members of the household receive public income-maintenance payments.

2143.4. What are “average household operating expenses” under the one-third reduction rule?

Household operating expenses are the household's total monthly expenditures for food, rent, mortgage, property taxes, heating fuel, gas, electricity, water, and sewerage and garbage collection services. Generally, household operating expenses are averaged over a 12-month period.

2143.5. What is “pro rata share” under the one-third reduction rule?

A pro rata share of average household operating expenses is the average monthly operating expenses divided by the number of people in the household. The ages of the people in the household do not matter.

2144. Presumed maximum value rule.

2144.1. How is in-kind support and maintenance valued under the presumed maximum value rule?

Instead of determining the actual value of in-kind support and maintenance, we presume that its value is not more than an amount equal to one-third of the applicable FBR plus \$20. Unlike the value of the one-third reduction, the presumed maximum value amount can be contested.

2144.2. Can you show that the actual value of in-kind support and maintenance is less than the presumed value?

If you can show that the actual value of the food, clothing, or shelter you receive is less than the presumed maximum value, we use the actual value in computing countable income.

2144.3. When does the presumed maximum value rule apply?

The presumed maximum value rule applies whenever you receive food, clothing, or shelter and the one-third reduction rule does not apply. (See §2142.4.) These presumed maximum value situations are:

- A. Living throughout a month in another person's household but not receiving both food and shelter from that person;
- B. Living in your own household (e.g., someone outside the household pays the rent); or
- C. Living in a non-medical institution.

Note: Room and board provided by anyone during your medical confinement does not count as income at all.

2144.4. Are there any exceptions to applying the presumed maximum value rule?

The value of any in-kind support and maintenance provided to you living in a private nonprofit institution (other than one for medical care, education, or vocational training) is excluded, provided:

- A. The in-kind support and maintenance is furnished by the institution itself; or

- B. The in-kind support and maintenance is furnished by another private nonprofit organization that does not have an express obligation to provide you with in-kind support and maintenance.

2145. Temporary absences and in-kind support and maintenance.

2145.1. How does your temporary absence affect the value of in-kind support and maintenance?

A temporary absence may be due to employment, hospitalization, vacations, or visits. When you are temporarily absent from a permanent living arrangement, in-kind support and maintenance continues to be valued based on your permanent living arrangement. We do not consider in-kind support and maintenance you receive during your temporary absence.

If the value of the one-third reduction applies in your permanent living arrangement, the value of the one-third reduction continues to apply while you are temporarily absent. This is true even if you pay for food or shelter during your absence.

2145.2. When are you considered temporarily absent?

You are temporarily absent when you:

- A. Were in a permanent living arrangement for at least one full calendar month; and
- B. Intend to and do return to the permanent living arrangement in the same calendar month or the next month.

2145.3. Are there any other situations when you may be considered temporarily absent for the purpose valuing in-kind support and maintenance?

There are situations where you are considered temporarily absent. Under these situations, we value your in-kind support and maintenance based on your permanent living arrangement, regardless of the length of your stay in the facility.

- A. When you are away because of a stay in a medical treatment facility under circumstances such that the \$30 payment limit applies, but you intend to return to your permanent living arrangement.

Note: Room and board provided during a medical confinement is not income. No in-kind support and maintenance are considered during the absence.

- B. If you are absent from a permanent living arrangement that is with an essential person, the essential person deeming rules (see §2171)

continue to apply during a temporary absence. The absence cannot exceed six months, even if for hospitalization.

- C. A child under age 22 is generally temporarily absent while away at school, regardless of the length of the absence. As long as the child comes home on some weekends, or for lengthy holidays or vacations, the child is temporarily absent.

Note: If a child is under age 18 and his or her permanent living arrangement is with an ineligible parent, the deeming rules continue to apply during the temporary absence. Any in-kind support and maintenance received at the school and not paid for by the parent is income.

2146. Acting as an “agent.”

2146.1. Can an SSI beneficiary have someone act as their agent?

It is not uncommon to find an individual (or an institution or other organization, such as a State welfare agency) acting as an “agent” on behalf of another individual.

2146.2. What does an agent do?

Acting as an agent is somewhat similar to being a representative payee (see Chapter 16) and may even include the representative payee function. Being an agent simply means that the agent is acting on behalf of another person.

2146.3. Do agents get paid?

An agent does not derive income or resources from that function unless:

- A. The agent is paid a fee for services; or
- B. The agent misuses the other person's funds.

A SSI recipient may give money to another recipient who will do some grocery shopping for the first recipient. The money belongs to the first recipient and any food purchased with it has been paid for by that first recipient, so the food is not considered in-kind support and maintenance. The second recipient, acting as an agent of the first, does not receive income when the first person's funds are used on behalf of that first person.

2147. Tables of Federal benefit rates, one-third reduction values, and presumed maximum values.

2147.1. What are the applicable Federal benefit rates (FBR)?

	1994	1995	1996	1997	1998	1999	2000	2001
Individual Full FBR	\$446	\$458	\$470	\$484	\$494	\$500	\$512	\$530
Medicaid Care	\$30	\$30	\$30	\$30	\$30	\$30	\$30	\$30
Eligible Couple Full FBR	\$669	\$687	\$705	\$726	\$741	\$751	\$769	\$796
Medicaid Care	\$60	\$60	\$60	\$60	\$60	\$60	\$60	\$60
Essential Person (E/P) Increment	\$223	\$229	\$235	\$242	\$247	\$250	\$257	\$266

2147.2. What are applicable the one-third reduction rule values (RRV)?

	1994	1995	1996	1997	1998	1999	2000	2001
Individual	\$148.66	\$152.66	\$156.66	\$161.33	\$164.66	\$166.66	\$170.66	\$176.66
Individual and E/P	\$223.00	\$229.00	\$235.00	\$242.00	\$247.00	\$250.00	\$256.33	\$265.33
Eligible Couple	\$223.00	\$229.00	\$235.00	\$242.00	\$247.00	\$250.33	\$256.33	\$285.33

2147.3. What are the applicable presumed maximum values (PMV)?

	1994	1995	1996	1997	1998	1999	2000	2001
Individual PMV	\$168.66	\$172.66	\$176.66	\$181.33	\$184.66	\$186.66	\$190.66	\$196.66
Individual and E/P PMV	\$243.00	\$249.00	\$255.00	\$262.00	\$267.00	\$270.00	\$276.33	\$285.33
Eligible Couple PMV	\$243.00	\$249.00	\$255.00	\$262.00	\$267.00	\$270.33	\$276.33	\$285.33

RESOURCES

2148. Role of resources.

2148.1. How do resources affect SSI benefits?

The amount of your resources determines whether you are eligible for any given month. If your countable resources are within the limit for eligibility, they have no effect on the amount of your SSI payment. If you have too many resources, you are not eligible for SSI benefits. However, not everything you have is a resource and not all resources count.

2148.2. Does somebody else share responsibility for you?

In certain situations, a person is expected to share financial responsibility for another individual. If someone else shares financial responsibility for you, like a spouse or a parent if you are a child, the resources (and income) of that person(s) are also considered in determining your eligibility. (See §2167.)

2149. What is considered a resource for SSI purposes?

For SSI purposes, a resource is any of the following owned by you (or your spouse, if any): cash, liquid assets, and real or personal property that can be converted to cash to obtain support and maintenance. If you have the right, authority, or power to liquidate the property, it is considered a resource.

2150. Liquid and non-liquid resources.

2150.1. How are resources categorized?

Resources generally are categorized as either “liquid” or “non-liquid.” The difference between the two types of resources is important when determining whether:

- A. A resource can be excluded as non-business property essential to self-support (see §2158); or
- B. You qualify for conditional payments (see §2164).

2150.2. What are “liquid” resources?

Liquid resources are those resources that are:

- A. In the form of cash; or
- B. Convertible to cash within 20 working days.

The most common types of liquid resources are savings and checking accounts, stocks, bonds, mutual funds, promissory notes, certain trusts, and certain types of life insurance.

2150.3. What are “non-liquid” resources?

Non-liquid resources are all resources that cannot be converted to cash within 20 working days. They include both real and personal property. Some kinds of resources may be either liquid or non-liquid (e.g., an automobile or life insurance).

2151. What is NOT considered a resource?

The term “resource” does not apply to:

- A. Any property right that has a legal restriction preventing its sale or liquidation;
- B. Home energy or support and maintenance assistance (see §2139);
- C. Restricted allotted land owned by an enrolled member of an Indian tribe if the individual cannot sell, transfer, or otherwise dispose of the land without the permission of others;
- D. Except for cash reimbursement of medical or social services expenses already paid by the individual, cash received for medical or social services that is not income under §§2130(A) and (B);

Note: This exclusion applies **only** for the calendar month following the month of its receipt. Cash retained until the first moment of the second calendar month following its receipt is a resource at that time.

- E. Retroactive in-home supportive services payments to ineligible spouse and parent, but only for the month following receipt.

- F. Death benefits an individual will use to pay the deceased's last illness and burial expenses for the first month following the month of receipt. This only applies for one calendar month following receipt; and
- G. Certain gifts of domestic travel tickets if excluded from income and not converted to cash.

2152. Ownership of resources.

2152.1. Can more than one person own a resource?

Resources may be owned outright by just one person or ownership may be shared by two or more people.

2152.2. How do you determine what is your resource if you share ownership with another person?

Only that portion of a property that is designated as belonging to you can be considered your resource (except for deeming as described in §2167). If there is more than one owner and the consent of the co-owner(s) is needed for you to liquidate your share, then your share is not a resource if the co-owner(s) do not agree to sell.

If you have a time deposit, checking, or savings account and you have unrestricted access to the funds, you are considered to own the entire amount, even if there is a co-owner on the account.

2152.3. How are your resources valued if you are married?

The total value of a countable property owned only by you and your (eligible or ineligible) spouse is compared with the resource limit for a couple. (See §2166.)

2153. Countable resources.

2153.1. What resources are countable?

Not all of your resources count in determining your eligibility for SSI (See §2156.) Countable resources are those left after we:

- A. Eliminate from consideration any asset that is not a resource; and
- B. Apply all appropriate exclusions to the assets that are resources.

Countable resources are determined on a monthly basis. We compare them with the statutory resources limit to determine whether you are eligible for that month.

2153.2. What are the applicable resource limits?

As of January 2001, the applicable limits are:

- A. \$2,000 for an individual without a spouse; and

B. \$3,000 for an individual with an eligible spouse or a living-with ineligible spouse.

See §2166 for a table of resource limits.

2154. How resources are valued.

2154.1. How does SSA value resources?

We generally value both liquid and non-liquid resources at their equity value. Equity value is the price for which the item can reasonably be expected to sell for on the open market, in the particular geographic area, minus any encumbrances (e.g., a loan, a mortgage).

2154.2. Are there any exceptions to valuing cash?

Cash is always valued at its face value. The fact that you owe money does not mean that a specific amount of cash in hand or in a bank account is actually “encumbered.”

2154.3. Are there any exceptions to valuing automobiles?

An automobile that cannot be totally excluded based on its use is valued at its **current market value** (see §2157). A second vehicle is valued at equity.

2155. When are resources valued?

Your countable resources are established for each month using their value as of the first moment of the month. We do not consider any change in the value of countable resources, or any conversion of a resource from an excluded to a non-excluded form (or vice versa), until the beginning of the following month. When you file a claim or seek reinstatement during a month, your resources are valued as of the first moment of that month to determine eligibility.

2156. What are the resource exclusions?

In determining countable resources, certain exclusions are authorized by Title XVI of the Social Security Act, by other Federal laws, and by certain court cases. These exclusions are:

- A. An individual's home, regardless of value. This exclusion applies to a home owned by the individual or the individual's spouse if it is the principal place of residence. A home includes any adjacent land and related buildings on it;
- B. Restricted allotted Indian lands;
- C. Household goods and personal effects of reasonable value. Reasonable value is considered \$2,000 equity. However, in looking at equity value, we exclude one wedding ring and one engagement ring, regardless of value. We also exclude personal items required

because of a person's physical condition (such as wheelchairs or prosthetic devices);

- D. One automobile, regardless of value, if used to provide necessary transportation. If not used to provide necessary transportation, to the extent its current market value is not more than \$4,500 (see §2157);
- E. Property of a trade or business without limit;
- F. Non-business property of a reasonable value that is needed for self-support;
- G. Resources of a blind or disabled individual that are needed carry out an approved plan for achieving self-support (see §2177);
- H. Life insurance as described in §2159;
- I. Burial spaces and certain burial funds up to \$1,500 as explained in §2160 and §2161;
- J. Disaster relief as described in §2162;
- K. Payments or benefits excluded by provisions of a Federal statute other than Title XVI of the Social Security Act;
- L. Title XVI or Title II retroactive payments as provided in CFR §416.1233;
- M. Housing assistance as provided in CFR §416.1238;
- N. Refunds of Federal income taxes and advances made by an employer relating to an earned tax credit as provided in CFR §416.1255;
- O. Shares of stock held by a native of Alaska in a regional or village corporation during the 20-year period in which, under the provisions of the Alaska Native Claims Settlement Act, such stock cannot be transferred;
- P. Payments received as compensation for expenses incurred or losses suffered as a result of a crime for nine months following receipt;
- Q. Relocation assistance from a State or local government for nine months; and
- R. Dedicated financial institution accounts required to be established for the payment of past-due benefits to disabled children as provided in 20 CFR 416.1247.

Note: An eligible couple gets the same resource exclusions as an eligible individual. However, the resource limit is higher for an eligible couple.

2157. Exclusion of an automobile.

2157.1. Are automobiles excluded from resources?

An automobile can be excluded from resources based on use or based on current market value.

2157.2. When are automobiles excluded from resources based on use?

One automobile belonging to you is excluded from resources if used to provide necessary transportation. The value of the automobile does not matter. This means that you or a member of your household uses the vehicle:

- A. To obtain medical treatment;
- B. In connection with employment;
- C. For transportation of or operation by a handicapped individual; or
- D. Because of climate, terrain, distance, etc., to perform necessary daily activities such as shopping.

2157.3. When are automobiles excluded from resources based on current market value?

If your automobile cannot be excluded based on its use, it can be excluded to the extent that its current market value is not more than \$4,500. Any market value more than \$4,500 counts toward the applicable resource limit, unless the vehicle qualifies for exclusion as being necessary for self-support (see §2158).

2158. Is property needed for self-support excluded from resources?

We exclude certain property from resources on the basis that it is necessary for your self-support. Such property, that may be business or non-business, can be excluded as follows:

- A. Liquid or non-liquid property used in a trade or business any non-liquid property you use as an employee can be excluded without limit.
- B. Non-liquid non-business income producing property that:
 - 1. Has an equity value of no more than \$6,000 (equity value above \$6,000 is countable); and
 - 2. Produces a net annual return of at least six percent of its excluded equity value.
- C. Non-liquid non-business property that:
 - 1. Has an equity value of no more than \$6,000; and

2. Is used to produce goods or services essential to your daily activities. (For example, land or tools used to produce food solely for consumption by you or your household.)

Note: You cannot exclude liquid non-business property.

2159. Life insurance.

2159.1. Is life insurance considered a resource?

Life insurance is a resource if:

- A. You own it; and
- B. It has a cash surrender value.

For example, burial insurance and most kinds of term insurance have no cash surrender value. These are not resources.

2159.2. Can life insurance with a cash surrender value be excluded from resources?

Life insurance that has a cash surrender value and is owned by you (or your spouse) is excluded from countable resources if the total face value of all policies you own on any one person is not more than \$1,500. However, if the total face value of such insurance is more than \$1,500, then the total cash surrender value of the insurance counts as a resource, unless it is designated as funds set aside for burial. (See §2161.)

2160. Do burial spaces count as resources?

The value of burial spaces for you, your spouse, or for any member of your immediate family does not count as resources. This includes grave sites, vaults, crypts, caskets, mausoleums, urns, and other repositories traditionally used for the remains of a deceased person. It also includes headstones and grave markers.

2161. Burial funds.

2161.1. Do burial funds count as resources?

Money you set aside for burial up to \$1,500 each for you and your spouse are excluded from resources if:

- A. The resource is designated as funds specifically set aside for burial; and
- B. The funds set aside for burial are not combined with non-burial assets.

Note: This exclusion also applies to burial funds set aside for the burial of an eligible child's ineligible parent or parents when parent-to-child deeming applies (see §2169).

2161.2. What do burial funds include?

Burial funds include revocable burial contracts, burial trusts or other burial arrangements, cash, financial accounts, or other financial instruments with a definite cash value that is clearly designated for burial expenses.

2161.3. When does SSA reduce your exclusion?

We must reduce your \$1,500 exclusion by:

- A. The face value of insurance policies you own if the cash surrender value of the policies has been excluded as described in §2159; and
- B. Amounts in an irrevocable burial trust or any other irrevocable arrangement that is available to meet your (or your spouse's) burial expenses, unless it is for excluded burial spaces.

2161.4. Does interest earned on your burial fund count as resources?

Interest earned on your excluded burial funds and appreciation in the value of the funds do not count as income and resources if you leave them as part of your burial fund.

2161.5. What if I use my burial fund for another purpose?

If you use any excluded burial funds, including excluded interest or appreciation for a purpose other than burial, we may withhold your SSI check in an amount up to the amount of burial funds you spend.

2162. Resources affected by a disaster.

2162.1. What is considered a “major disaster”?

A “major disaster” is one declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (formerly the Disaster Relief Act of 1974).

2162.2. What resource exclusions apply when there is a disaster?

When a major disaster occurs, any assistance you receive from any of the following is excluded from resources:

- A. The Robert T. Stafford Disaster Relief and Emergency Assistance Act;
- B. Any other Federal statute because of the disaster;
- C. Comparable assistance received from a State or local government or;
- D. A disaster assistance organization.

Any interest earned on assistance described in (A)-(D) above is also excluded.

2162.3. What if something happens to an excluded resource?

If an **excluded** resource is lost, damaged, or stolen, cash or in-kind replacement from any source is excluded from resources. Under this exclusion, “cash” includes any interest earned on the cash. Both cash received and interest earned can be excluded for up to nine months (which can be extended to 18 months for good cause) from the date of receipt.

Note: For victims of Hurricane Andrew and, effective February 15, 1996, other victims of disasters declared by the president, the exclusion may be extended for 12 months beyond the nine-month extension for good cause for a total of up to 30 months.

2163. Real property that cannot be sold.

2163.1. Does real property you cannot sell count as resources?

Real property that you cannot sell is excluded from your resources as long as it cannot be sold because:

- A. You own the property jointly with another owner(s) and:
 - 1. It is the other owner(s) principal place of residence; and
 - 2. The sale would cause undue hardship (due to loss of housing) to the other owner(s); or
- B. Your reasonable efforts to sell have been unsuccessful.

2163.2. How long is the property excluded from resources based on reasonable effort to sell?

Initially, we evaluate your reasonable but unsuccessful efforts to sell under a nine-month conditional benefits arrangement. After the nine months, the property is excluded as long as it cannot be sold and your efforts to sell continue.

2164. Conditional payments despite excess resources.

2164.1. Can you receive conditional payments even if you have excess resources?

If your countable resources are more than the applicable limit, you may be able to receive conditional payments. Conditional payments are made when your countable resources include some that are non-liquid. We recognize that it can take months to convert non-liquid resources to cash for support and maintenance.

2164.2. Are you still eligible for regular SSI benefits if you receive conditional payments?

If you receive conditional payments, you are not eligible for regular SSI benefits. You must refund the payments at the end of the conditional payment period.

2164.3. Under what circumstances can you receive conditional SSI payments?

You can receive conditional SSI payments only if:

- A. Your total countable liquid resources do not exceed triple the applicable FBR (i.e., as of January 2001 do not exceed \$1,590 for an individual or \$2,388 for a couple (see §2147); and
- B. You agree to dispose of the excess non-liquid resources within nine months if real property (three months for other property) and refund the SSI payments you receive during that period. The time limit for personal property may be extended an additional three months for good cause. If you do not sell the property, see §2163.

2165. Is your SSI eligibility affected if you dispose of a resource below its market value?

If you give away or sell a resource at less than fair market value on or after December 13, 1999, you may be ineligible for SSI for up to 30 months. We also must report such a transfer to the State Medicaid agency. A transfer of assets may result in a period of ineligibility for some Medicaid covered nursing home services.

2166. What are the statutory resources limits?

The following table shows the applicable statutory resources limits:

Resources Limitations

Effective Date	Single Individual	Individual and Spouse
1/1/87	\$1,800	\$2,700
1/1/88	\$1,900	\$2,850
1/1/89, and later	\$2,000	\$3,000

DEEMING

2167. Deeming of income and resources.

2167.1. What is “deeming”?

When we determine the eligibility and amount of payment for an SSI recipient, we consider the income and resources of people responsible for the recipient's welfare. This concept is called “deeming.” It is based on the idea that those who have a responsibility for one another share their income and resources. It does not matter if money is actually provided to an eligible individual for deeming to apply.

2167.2. In what situations are income and resources deemed?

There are four types of situations where income and resources are deemed:

- A. From an ineligible spouse to an eligible individual (see §2168);
- B. From a parent to a child under age 18 (see §2169);
- C. From a sponsor to an alien (see §2170); and
- D. From an essential person to an eligible qualified individual (see §2171).

2167.3. What items are not included in the deeming of income?

The following items are not included when deeming the income of an ineligible spouse or parent. Item A is not included when deeming the income of a sponsor or an essential person, but items B through R are included.

- A. Income excluded by Federal laws other than the Social Security Act;
- B. Any public income-maintenance payments received by an ineligible spouse or parent, and any income counted or excluded in figuring the amount of those payments;
- C. Any income of an ineligible spouse or parent used by a public income-maintenance program to determine the amount of that program's benefit to someone else;
- D. Any portion of a grant, scholarship, or fellowship used to pay tuition or fees;
- E. Money received for providing foster care to an ineligible child;
- F. The value of food stamps and the value of Department of Agriculture donated foods;

- G. Food raised by an ineligible spouse or parent and consumed by household members;
- H. Tax refunds on income, real property, or food purchased by the family;
- I. Income used to fulfill an approved plan for achieving self-support (for blind and disabled individuals);
- J. Income used to comply with the terms of court-ordered support, or child support payments enforced under Title IV (Grants to States for Aid and Services to Needy Families with Children and for Child-Welfare Services, Part D-Child Support and Establishment of Paternity) of the Social Security Act (see §2313);
- K. The value of in-kind support and maintenance;
- L. Payments received by certain recipients under the Alaska Longevity Bonus program;
- M. Disaster assistance (see §2138);
- N. Certain home energy and support and maintenance assistance (see §2139);
- O. Income received infrequently or irregularly (see §2135(C) and §2137(G));
- P. Work expenses if the ineligible spouse or parent is blind;
- Q. Income of an ineligible spouse or parent paid under a Federal, State, or local governmental program to provide chore, attendant, or homemaker services; and
- R. Certain housing assistance.

2167.4. What is excluded from the deeming of resources?

Pension funds owned by an ineligible spouse or by an ineligible parent or spouse of a parent are excluded from resources for deeming purposes. Pension funds are defined as funds held in Individual Retirement Accounts (IRA's) or in work-related pension plans.

2167.5. When does a change for an eligible individual into or out of a deeming situation become effective?

A change for an eligible individual into or out of a deeming situation is effective the month following the month of change. This rule also applies for changes within the deeming household that affect the computation of deemed income, such as the birth or death of an ineligible child, the marriage or separation of an ineligible parent, etc.

2168. Deeming from an ineligible spouse to an eligible individual.

2168.1. How are income and resources deemed from an ineligible spouse to an eligible individual?

When an eligible individual lives in the same household with an ineligible spouse, the income and resources of the ineligible spouse are deemed available to the eligible individual. If there are ineligible children under age 21 in the household, an allocation for their living allowance is provided. A living allowance is also provided for the ineligible spouse.

2168.2. When does deeming NOT apply?

Deeming does not apply when the eligible individual is not in the same household as the ineligible spouse unless:

- A. The absence is temporary; or
- B. The ineligible spouse is absent from the household due only to a duty assignment as a member of the armed forces on active duty.

2168.3. What income is excluded?

Certain types of income are excluded when determining the income to be deemed from the ineligible spouse. They are listed in (§2167.3) above. Also, there are additional exclusions provided based on whether the ineligible spouse receives earned or unearned income.

2168.4. Can deeming result in a higher payment?

Under spouse-to-spouse deeming, an individual can never receive a higher payment with deeming than would be received if deeming was not done. If deeming does apply, the ineligible spouse's income is combined with the income of the eligible individual and compared to the FBR for a couple (see §2147).

2168.5. What resources are excluded?

The same resource exclusions that apply to an eligible individual apply to an eligible individual with an ineligible spouse, but an additional exclusion explained in (2168.3) above applies to an ineligible spouse. The resources of the eligible individual and the ineligible spouse are counted together and compared to the resource limit for a couple (see §2166).

2169. Deeming from a parent to a child under age 18.

2169.1. How are income and resources deemed from a parent to a child under age 18?

A child under age 18 is subject to deeming from a natural or adoptive parent or a stepparent living in the same household. However, if a child

lives only with the stepparent due to the death or divorce of the natural parent, the stepparent is not considered a parent for deeming purposes.

2169.2. What income is excluded?

The same exclusions that apply to the income of an ineligible spouse, as listed in (§2167.3) above, apply to the ineligible parent. There are also living allowances for the parent(s) and an allocation for each ineligible child under age 21 living in the household. Any income of an ineligible child reduces the amount of the allocation.

The type of calculation used to figure the amount of deemed income for the child depends on the type of income the parent has after allocations are made for ineligible children.

2169.3. When does deeming NOT apply?

Deeming does not apply if the eligible child does not live in the same household as the parent, unless the absence is temporary (e.g., the child is away at school).

2169.4. What resources are excluded?

Any resources excluded for an eligible individual are excluded for an ineligible parent(s). However, an additional exclusion explained in (§2167.3.) above applies to an ineligible parent(s). Currently, the balance of countable resources more than \$2,000 in the case of one parent, or \$3,000 in the case of two parents (or one parent and the parent's spouse), is deemed to the child.

2169.5. Is there an exception to normal parent-to-child deeming?

There is a provision that allows a waiver of the normal parent-to-child deeming rules. This waiver applies in very few circumstances.

Beginning July 1, 1990, parental income or resources are not deemed to any child under age 18 who:

- A. Is disabled;
- B. Received SSI benefits limited to the \$30 reduced benefit rate because of residence in a medical treatment facility;
- C. Is eligible for Medicaid under a State home care plan; and
- D. Would be ineligible for SSI benefits because of deemed parental income or resources.

2170. Deeming from a sponsor to an alien.

2170.1. What is sponsor-to-alien deeming?

The income and resources of an individual who sponsors an alien's entry into the U.S. (by signing an affidavit of support) are considered in

determining the alien's eligibility for SSI. The income and resources of the sponsor's spouse are also considered when the spouse is living with the sponsor. This process is called sponsor-to-alien deeming. Deeming applies whether or not the alien lives with the sponsor.

2170.2. What is an affidavit of support?

The sponsor of an alien must sign an affidavit of support, an agreement in which the sponsor promises to provide assistance to the alien. The Immigration and Naturalization Service (INS) currently uses two different types of affidavits:

- A. For aliens who applied for admission to the U.S. (or applied for a change in their immigrant status) prior to December 19, 1997, an unenforceable affidavit (INS Form I-134) was used; and
- B. For aliens applying for admission or change of status on or after December 19, 1997, a new legally enforceable affidavit (INS Form I-864 is generally used. The new affidavits are used only in family situations, including employment-based immigration with family involvement.

Different deeming rules apply to aliens, depending on which type of affidavit their sponsor signed.

2170.3. When does sponsor-to-alien deeming apply?

Deeming applies to all aliens sponsored under the legally enforceable affidavit of support. When the enforceable affidavit is used, deeming continues until the alien becomes a U.S. citizen or obtains 40 work credits. Deeming can be suspended in certain cases, if the alien is subjected to battery or cannot obtain food and shelter.

Deeming also applies to aliens sponsored under the unenforceable affidavit of support, unless:

- A. The alien has been granted asylum by the Attorney General;
- B. The alien is living in the U.S. under color of law and has not been admitted for permanent residence;
- C. The alien filed for SSI prior to October 1, 1980;
- D. The alien is sponsored by an organization; or
- E. The alien becomes blind or disabled after admission for permanent residence. In this case, deeming applies up until the month disability or blindness begins.

2170.4. What income is excluded?

The exclusions that apply to the income of an ineligible spouse or parent listed in (§2167.3) above do not apply to a sponsor, except for certain types of income excluded by other Federal laws. Allocations are provided for the sponsor, the sponsor's spouse in the same household,

and the sponsor's dependents as defined by the Internal Revenue Service. These allocations are subtracted from the income of the sponsor and the living-with spouse to determine the amount of income to deem to the alien.

2170.5. What resources are excluded?

Resources excluded from the resources of an eligible individual are also excluded from the resources of a sponsor. Currently, the balance of countable resources above \$2,000 (or \$3,000 for a sponsor with a living-with spouse) are deemed to an alien.

2171. Deeming from an essential person to an eligible qualified individual.

2171.1. How are income and resources deemed from an essential person to an eligible qualified individual?

An eligible qualified individual with an essential person in the household receives an amount of SSI that is increased by an increment for the essential person. All of the essential person's income is deemed to the qualified individual.

2171.2. What income is excluded?

None of the exclusions from income that apply to an ineligible spouse or parent and are listed in (§2167.2) above apply to an essential person except those exclusions provided by Federal statutes other than the Social Security Act.

2171.3. What resources are excluded?

All of the resources of an essential person are deemed to the qualified individual. If the amount of income or resources to be deemed would make the qualified individual ineligible, or if the qualified individual so chooses, the essential person and the increment are not considered in computing the SSI payment. Once either of these situations occurs, the essential person cannot be reinstated later.

SPECIAL PROVISIONS FOR CONVERTED RECIPIENTS

2172. Special provisions for converted recipients.

2172.1. What is a “converted” recipient?

You are a “converted” recipient (see §2109) if you, for December 1973, were:

- A. Eligible for assistance under one of the Federal/State adult assistance programs for the aged, blind, or disabled; and

B. Automatically transferred (“converted”) to the SSI rolls for January 1974.

There are still in effect certain special “grandfather” provisions to ensure you are not disadvantaged by your conversion to SSI. These are explained in the subsections that follow.

2172.2. Are your countable resources more than the allowable limit?

Your countable resources as a converted recipient may be more than the allowable limit described in §2166. When that occurs, you are considered to be within the allowable limit for SSI eligibility if your resources are not more than the maximum amount of resources specified in the appropriate State plan as in effect in October 1972. This is known as the “**State Plan Resources Limits.**”

You may have been converted in any category; i.e., as blind, as aged, or as disabled. You are entitled to the use of the State plan resource limits provided, since December 1973:

- A. You have lived continuously in the same State as that under whose plan you were eligible for that month; and
- B. You have not been ineligible for SSI benefits for a period of more than six months in a row.

2172.3. Were you converted because of blindness?

There are alternative rules for computing countable income if you were converted based on blindness. This provision is known as “**State Plan Income Disregards.**” These rules do not apply to anyone converted as aged or as disabled.

Under this alternative, your countable income is computed using whichever of the following results in the lower amount:

- A. The SSI income exclusions described in §2135 and §2137; or
- B. The disregards that would have applied under the State plan for October 1972.

In order to qualify for the use of the State plan income disregards, you must have lived continuously in the same State as that under whose plan you were eligible for that month.

2172.4. Is your State's definition of disability different from ours?

Occasionally, a State plan for aid to the permanently and totally disabled had a less strict definition of disability than appears in Title XVI of the Social Security Act. If so, the “**State Plan Disability Definition**” provision may apply. When that occurs, you are considered eligible for SSI on the basis of disability if you:

- A. Met the disability criteria in the State's approved plan as in effect for October 1972;
- B. Received aid under that State plan for the month of December 1973 and for at least one month before July 1973; and
- C. Continue to be disabled as defined under that State plan.

This grandfather provision does not require continuous SSI eligibility or residence in the same State from which you were converted.

2172.5. Do you have an essential person living in your household?

Your FBR may be increased if you have an “essential person” living in your household. This is known as the “**Essential Person Increment.**” You may receive this “essential person increment” to the FBR only if:

- A. You were a recipient for December 1973 of aid or assistance under:
 - 1. A State plan approved under Title I (Grants to States for Old-Age Assistance for the Aged);
 - 2. Title X (Grants to States for Aid to the Blind);
 - 3. Title XIV (Grants to States for Aid to the Permanently and Totally Disabled); or
 - 4. Title XVI (Grants to States for Aid to the Aged, Blind, or Disabled) of the Social Security Act, and
- B. You had the essential person's needs taken into account in determining your need for aid or assistance.

The essential person increment is \$266 per month in 2001. It is added to the FBR, and the total is due you if you have no countable income. Like the FBR for an individual and the FBR for an eligible couple, the essential person increment is increased each January by the cost-of-living adjustment.

WORK INCENTIVES

2173. What is the purpose of work incentives for the blind and disabled?

SSI payments provide a basic level of support for blind or disabled individuals with low earnings ability due to their impairments. A number of work incentive provisions have been incorporated into the SSI program. The purposes of the work incentives are to:

- A. Enable blind and disabled individuals to return to work;
- B. Increase their levels of work activity without the loss of SSI disability status; and/or

C. Have their SSI benefits protected from reduction based on the increased earnings.

In most States, they also permit continued Medicaid coverage (see §2309) after cash payments end.

2174. Extended benefits for participants in vocational rehabilitation programs.

2174.1. Are your benefits extended if you are in a vocational rehabilitation program?

If you are participating in a vocational rehabilitation program, your benefits may continue until:

- A. You complete the program; or
- B. A specified period of time, in situations where your disability or blindness ends before you complete the vocational rehabilitation program.

2174.2. Are you expected to recover before the end of the program?

This provision does not apply if you are not expected to recover medically before the end of the program and you began the program before your recovery.

2175. Impairment-related work expenses.

2175.1. Do work expenses related to your impairment count as income?

The cost of certain impairment-related services and items you as a disabled (but not blind) person need in order to work can be deducted from earnings in determinations of SGA. This is true even if you need these items and services for non-work activities. Your impairment-related work expenses (IRWE) are also excluded from earned income in determining monthly countable income (see §2135).

2175.2. How are impairment-related work expenses calculated?

In calculating an IRWE, an amount equal to the cost of certain attendant care services, medical devices, equipment, prostheses, and similar items and services is deducted from your earnings. The costs of routine drugs and routine medical services are not deductible unless these drugs and services are necessary to control your condition.

2176. Work expenses of the blind.

2176.1. Do your work expenses count as income if you are blind?

Your work expenses do not count as income if you:

- A. Are eligible to SSI based on blindness (not disability);
- B. Received SSI benefits on the basis of blindness for the month before you turned 65; and
- C. Receive earned income and the expenses relate to your earning the income.

A deductible expense does not need to be directly related to your blindness. It only needs to be an ordinary and necessary work expense.

2176.2. How much can you deduct?

There is no specific dollar limit on the amount you can deduct. However, the amount must be reasonable and not be more than your earned income in the month. Work expenses are deducted in the month you pay for them.

2176.3. What are some examples of work expenses?

Some frequently encountered work expenses include:

- A. Transportation to and from work;
- B. Meals consumed during work hours;
- C. Job equipment;
- D. Licenses;
- E. Income or Federal Insurance Contributions Act (FICA) taxes; and
- F. Costs of job training.

Expenses for life maintenance (such as life insurance or self-care) are not work-related and are not deductible.

2177. Plans for achieving self-support.

2177.1. What is a Plan for Achieving Self-Support (PASS)?

A Plan for Achieving Self-Support (PASS) allows you, as a disabled or blind person, to set aside income and/or resources for a work goal such as education, vocational training, or starting a business. You can even set aside funds to purchase work-related equipment. A PASS does not affect an SGA decision. Income and resources that are set aside are excluded only under the SSI income and resources tests.

Any blind or disabled SSI individual can have a PASS. It is important to keep in mind that as earnings go up, the individual who does not need one now may need one next month to remain eligible or to increase his or her SSI payment amount.

2177.2. When does SSA recognize your PASS?

We recognize your PASS if you:

- A. Have a feasible work goal;

- B. Have a specific savings/spending plan;
- C. Provide for a clearly identifiable accounting for the funds you set aside; and
- D. Follow the plan and negotiate revisions as needed.

2177.3. Who can help you with your PASS?

Anyone may help you with your PASS: vocational counselors, social workers, or employers. Our responsibilities are to evaluate your PASS and determine its acceptability. It is also our job to help you put your plan in writing.

2178. Special cash benefits to disabled individuals who engage in SGA.

2178.1. Do you engage in Substantial Gainful Activity (SGA)?

We provide special SSI cash benefits if your gross earned income is at the amount designated as the SGA level (currently earnings over \$500 a month). You must continue to be disabled and meet all other eligibility rules.

2178.2. How is the special cash benefit computed?

There are no special computations. The only difference between the regular rules and the special rules is that the special rules allow you to be eligible even if you are performing SGA. Your payment amount is still calculated in the usual way. States that pay SSI supplements have the option of supplementing special benefit cases.

2178.3. How do you get the first month of the special benefit?

To get the first month of special SSI cash benefits, you must have been eligible to receive a regular SSI cash payment in a previous month within the current period of eligibility. Then, special benefits may be paid for later months until you become eligible again under the regular rules or become ineligible.

2179. Extended Medicaid eligibility for people who work.

2179.1. Are you eligible for Medicaid even if you work?

Many States provide Medicaid eligibility (see §2309) based on SSI eligibility regardless of whether you meet the State's own definition of "medically needy." Even if you lose your cash benefits because countable income is more than the FBR plus the State supplement, if any, you may be eligible for continued Medicaid coverage if you work.

Medicaid coverage continues for most working disabled **or blind** people when earnings (along with other income) become high enough to cause SSI cash benefits to stop.

Note: Performance of SGA is not an issue. One dollar in countable earned income is enough to qualify if all other requirements are met.

2179.2. How do you qualify for extended Medicaid coverage?

To qualify for extended Medicaid coverage, you must:

- A. Have a disabling condition;
- B. Need Medicaid in order to work;
- C. Not be able to afford equivalent medical coverage and publicly funded personal or attendant care that you would lose without assistance;
- D. Meet all non-disability requirements for SSI payment (other than earnings); and
- E. Have been eligible to receive a regular SSI cash payment in a previous month within your current period of eligibility.

Note: In some states, you must have qualified for Medicaid the month before these rules apply.

PAYMENTS

2180. What is the Federal SSI payment amount?

Federal SSI benefits are paid at different rates depending on whether you have an eligible spouse and whether you have an “essential person” (see §2110):

- A. **If you do not have an eligible spouse** - you are due the FBR of \$530 per month in 2001, provided you have no countable income; or
- B. **If you are an eligible couple** - You are due the FBR of \$796 per month in 2001, provided you have no countable income.

Both of these rates are established in the Social Security Act, and are subject to annual cost-of-living adjustments (COLA's). The COLA increases the FBR effective in January based on the increase in the Consumer Price Index.

2181. State supplementary payments.

2181.1. What are the types of State supplementary payments?

There are two types of State supplementary payments: mandatory and optional.

2181.2. When are State supplementary payments mandatory?

If you were converted to SSI from a State assistance program, your State must supplement the SSI amount. The amount of the supplement is what is necessary to provide you the same level of payment you had before you were converted to SSI.

Payments may be issued directly by the State or the State may elect Federal administration where the mandatory payment and the SSI payment are combined in one payment by the Federal Government.

2181.3. When are State supplementary payments optional?

Most States provide supplementary payments to SSI recipients. These payments vary from State to State and reflect differences in regional living costs. Supplementary payments may be made directly by the State or combined with the SSI payment (by mutual agreement of SSA and State agencies).

A Social Security office can let you know whether your State participates in this program. If so, you can file an application at a Social Security office or at a local welfare office.

2182. Computation of payments.

2182.1. How are payment rates reduced?

Payment rates described in §2180 are reduced by your countable income. If the remainder is more than \$0 but less than \$1, you are paid \$1 for the month.

2182.2. What is the benefit paid to a couple?

The SSI benefit due a couple is:

- A. The couple's FBR; **plus**
- B. Any essential person increment (see §2172.5) and federally administered State supplementary payment (see §2181) due; **less**
- C. The couple's countable income.

Generally, each member of an eligible couple is paid one-half of the couple benefit.

2182.3. Who receives payment if payment is higher to due an essential person?

If your payment computation includes an amount due because of an essential person, the increment is paid to you (and/or your eligible spouse), and not to the essential person.

2182.4. How are you paid if SSA administers the State supplementary payment?

When a Federal/State agreement allows us to administer your State supplementary payment, we add the supplementary payment to your monthly SSI payment. We pay you the total in one check.

2183. Retrospective monthly accounting.

2183.1. What is “retrospective monthly accounting”?

SSI payments are based on known circumstances for a past month. This is “retrospective monthly accounting” (RMA). Payments are computed for each month. RMA has two parts: an eligibility determination and a payment computation.

2183.2. How does the eligibility determination of RMA work?

If you are ineligible based on the current month's factors (including the current month's countable income), no payment is due and none is paid.

2183.3. How does the payment computation of RMA work?

If you are eligible based on the current month's factors, your payment is computed. The payment for a month is generally based on your countable income from the second month before the current month. The basic formula is as follows:

- A. Subtract the countable income from two months ago from the current month's FBR (plus any essential person increment); and
- B. Compute any federally administered State supplementary payment by subtracting any excess countable income.

It is possible for you to be eligible only for the State supplementary payment.

2183.4. Are there exceptions to the payment computation formula?

There are exceptions to the payment computation formula:

- A. **An individual or couple first becomes eligible for Federal SSI or re-attains Federal eligibility after a period of ineligibility.** The SSI benefit for the first month is based on the countable income in that month. The SSI benefit for the second month is based on the countable income in the first month. After that, the SSI benefit for each month is based on the countable income in the second prior month. This exception applies when an individual has been eligible for and paid only State supplementary payments and attains or re-attains eligibility for Federal SSI.

- B. **“COLA coordination.”** This exception applies only to SSI recipients who have Title II (Social Security) income. In COLA coordination, payment for January and February (the month of the COLA and the next month) is based on countable income from a prior month (as described above). The increase in Title II income in January and February is used immediately to compute the payments for January and February. There is no delay in using the increased Title II income.
- C. **Assistance under certain programs.** Effective April 1, 1988, retrospective monthly accounting does not apply to income received as assistance under:
1. Title IV, Part A (Aid to Families With Dependent Children) of the Social Security Act;
 2. Title IV, Part E (Federal Payments for Foster Care and Adoption Assistance) of the Social Security Act;
 3. Refugee cash assistance;
 4. Cuban/Haitian entrant assistance; and
 5. General and child welfare assistance provided by the Bureau of Indian Affairs.

These payments are used to determine the SSI benefit only for the month they are actually received. Effective February 4, 1994, people can receive Title IV, Part E and SSI at the same time.

2184. Proration of SSI payments.

2184.1. What does “proration” of SSI payments mean?

“Proration” means that you receive a fraction of your SSI benefit (Federal benefit plus any federally administered State supplement) that would otherwise be due for the month.

2184.2. When does proration of benefits occur?

Proration happens only in the first month you re-attain eligibility after a period of ineligibility. The fraction is based on the date you first re-attain all factors of eligibility for SSI. Both Federal SSI and federally administered State supplementary payments are subject to proration.

2184.3. What causes proration of benefits?

Factors that can cause proration are:

- A. No longer being a resident of a public institution;
- B. Being present in the U.S.;
- C. Compliance to file for other benefits; and
- D. Acceptance of vocational rehabilitation services.

2184.4. What is the formula for proration?

The proration formula is as follows:

- A. Take the benefit the you would otherwise be due for the month;
- B. Multiply the amount in (A) by the number of days in the month from (and including) the date you meet all factors of eligibility through the end of the month; and
- C. Divide the amount in (B) by the total number of days in the month.

2185. Windfall offset.

2185.1. What is the “windfall offset”?

The “windfall offset” is an important provision that affects individuals and couples eligible for SSI. It applies to people due both SSI and Social Security benefits. The windfall offset prevents a person from receiving more benefits retroactively than what would be received if all benefits were paid in the months they were due.

The computation of the windfall offset (whether the Social Security or SSI benefits are to be reduced) follows the general rules for computing SSI benefits (including RMA, COLA coordination, and proration).

2185.2. How does the windfall offset work?

If you are due retroactive Social Security benefits, they are reduced by the amount of SSI you would not have been due had your Social Security benefits been paid in the months they were due. The amount of the reduction is transferred from the trust funds to the general funds of the U.S. Treasury and the States (for any State supplementary amount you would not have been due). Your eligibility and payments under SSI are not affected for the retroactive period.

2185.3. Do you receive the SSI or the Social Security benefit payment first?

It is our policy to pay the SSI benefits first in order to protect possible Medicaid eligibility in the retroactive period. However, if due to processing requirements, you receive retroactive Social Security benefits first, your Social Security benefits count as income in the months they were due to compute SSI eligibility and payments due. Instead of your Social Security benefits being reduced, the SSI benefits are reduced. No SSI benefits may be payable.

2186. Interim assistance reimbursement.

2186.1. What is “interim assistance”?

“Interim assistance” is cash or vendor payments furnished by States or political subdivisions to you for meeting basic needs while your application for SSI is pending.

2186.2. How does interim assistance affect your benefit payment?

We may withhold the retroactive SSI payments due you at the time the first payment is made when:

- A. We receive a written authorization from you; or
- B. We receive notice from the State that it has such an authorization, if the automated authorization notification procedure applies.

We may then send the first check to a State or political subdivision. The State or political subdivision can use the check to reimburse itself for interim assistance furnished on your behalf and return anything left over to you.

2186.3. What is the scope of interim assistance?

Effective January 1, 1989, the definition of interim assistance was expanded to cover aid provided by States or political subdivisions to individuals:

- A. Whose SSI benefits are suspended or terminated; and
- B. Are later found eligible for payments.

2187. Direct field office payments.

2187.1. Can Social Security offices make direct payments of SSI benefits?

Social Security offices are authorized to make direct field office payments. There are two types of direct payments: SSI emergency advance payments (EAP) and SSI or Social Security immediate payments.

2187.2. Under what conditions can a Social Security office make an emergency advance payment?

SSI emergency advance payments are available only at the time of initial application if you need assistance before the first payment arrives. You must present strong evidence of the following:

- A. Qualifying for payment in the current or in the following month by meeting the qualifications for eligibility (age, disability, blindness, citizenship or alien status as applicable); and
- B. Meeting the income and resources limitations in the current or the following month.

2187.3. How much is the payment under an emergency advance payment?

Payments are made in an amount that is no more than the applicable FBR (see §2147) plus the least of:

- A. Any federally administered State supplement;

- B. The amount of that month's payment (computed according to §2182 and §2183); or
- C. The amount requested for the emergency.

2187.4. How does SSA recover the emergency advance payment?

The amount of the emergency advance payment is withheld from your first payment, certified to the U.S. Treasury, when retroactive payments are due in the EAP month. We recover the payment in up to six monthly increments starting the first month you are eligible for benefits.

If you are found ineligible before the emergency advance payment has been recovered from other payments for any reason except not being blind or disabled, you must repay the EAP.

2187.5. Under what conditions can a Social Security office make an immediate payment?

SSI or Social Security immediate payments are available at the field office management's discretion. To be considered for immediate payment, the following criteria apply:

- A. Your case involves delay in payment of benefits due;
- B. All development to establish eligibility is complete; and
- C. Field office management decides an immediate payment should be made.

Issuance of an SSI EAP does not mean you cannot receive an immediate payment of SSI or Social Security benefits. However, only one immediate payment, no more than \$400 for an individual or each member of a couple, can be issued every 30 days.

2188. Presumptive blindness/presumptive disability payments.

2188.1. Under what conditions does SSA make presumptive blindness/presumptive disability payments?

We can make a presumptive blindness/presumptive disability payment to you if:

- A. You are applying for the first time for SSI based on disability or blindness;
- B. Your medical condition is such that it presents a strong likelihood that you will be found disabled or blind under our rules; and
- C. You meet all non-medical factors of eligibility.

Presumptive disability/blindness payments are computed like other SSI benefits (RMA, COLA coordination, proration).

2188.2. How long are the payments made?

These payments may be made for up to six months while you wait for the formal decision of disability or blindness. They begin with the month a presumptive disability/blindness finding is made (by the local Social Security office or State disability determination agency based on specific criteria). Payments end after six months if a formal decision has not been made.

2188.3. What happens if SSA decides you are not disabled or blind?

If we make a formal decision that you are not disabled or blind, the decision does not cause you to be overpaid SSI benefits. Any overpayment would have to be based on a non-medical factor of eligibility.

DETERMINATIONS, APPEALS AND REOPENINGS

2189. Initial determinations.

2189.1. What is an “initial determination”?

An “initial determination” is the first decision made on an application, post-eligibility event, or a periodic redetermination of eligibility. An initial determination generally involves eligibility for, or the amount of, SSI payments (including federally administered State supplementary payments).

2189.2. What should you do if you are not satisfied with SSA's initial determination?

We offer several independent reviews of your case if you are dissatisfied with our decision. Each review is a step in the administrative appeals process. You **must** request review within specified time limits. If you do not request the next step within the time limit, our decision becomes final and binding on the parties affected (except for determinations/decisions reopened under the rules of administrative finality (see §2197)). We may extend the time limit for good cause.

2189.3. What matters can you appeal?

Your legal right to appeal flows from findings that are initial determinations. You do not have the legal **right** to appeal matters that are not the subject of an initial determination. However, we may, at our discretion, review, reopen, and revise our initial (or appellate) determination.

2189.4. What are examples of initial determinations?

The following are examples of initial determinations:

- A. Eligibility as an aged, blind, or disabled individual;
- B. Eligibility for and the amount of an SSI payment;
- C. Eligibility for and the amount of an SSA (or Federally) administered State supplementary payment;
- D. Eligibility for and the amount of payment to an eligible recipient who has an essential person living in the home;
- E. Residency, citizenship, or alien status;
- F. Amount of income and what constitutes income and exclusions from income for a period. However, there are no appeal rights on findings based on income estimates for a **future period**. Any changes of income estimates are disposed of as redeterminations;
- G. Amount of resources, what constitutes resources for a period, allocation of resources, tests of ownership, determination of value, exclusion from resources, and disposition of resources;
- H. Marital relationship of an individual and spouse for SSI purposes;
- I. Living arrangements for SSI purposes;
- J. Failure to file for and/or pursue benefits under other programs;
- K. Status as a child;
- L. Status as a resident of a public institution;
- M. Status as a drug addict or alcoholic and compliance with the terms, conditions, and requirements of treatment deemed appropriate for those conditions;
- N. Status as a patient, through any month, in a medical treatment facility receiving payments under Title XIX (Grants to States for Medical Assistance Programs) of the Social Security Act;
- O. Ineligibility for benefits because of refusal, without good cause, to accept available vocational rehabilitation services for the blind and disabled;
- P. Imposition of a penalty deduction for failure, without good cause, to report, or to report timely, any change in circumstances or events that would affect eligibility and/or payment amount;
- Q. Reduction, suspension, or termination of payments;
- R. Reinstatement of payments, as well as denial of reinstatement, when the individual has requested reinstatement in writing;
- S. Fact and amount of underpayment or overpayment;
- T. Waiver of recovery of overpayment;

- U. Need for a representative payee (except for a recipient under age 18, a person adjudged legally incompetent or a drug addict or alcoholic), the selection of a payee, that a designated payee will no longer serve, or suspension of payments for lack of a suitable payee. In cases of drug addiction and alcoholism, payment through a representative payee is mandatory and this is not an initial determination with administrative appeal rights. However, a legally competent drug addict or alcoholic may appeal the determination that a particular person should serve as representative payee. Only the recipient, the recipient's representative, or an essential person can appeal a decision on the selection of a representative payee;
- V. Decisions of ineligibility for failure to submit evidence;
- W. Denial of a request for withdrawal of an application, or the denial of a request for cancellation of a withdrawal request;
- X. Deemed redeterminations (i.e., the redetermination of eligibility that is presumed to have taken place on the first day of any month for which eligibility and payment amount do not change, but only for the purposes of administrative finality); and
- Y. Decision to recover an overpayment, including through 10 percent check adjustment.

2190. What administrative actions are NOT initial determinations?

The following are examples of administrative actions, but they are not initial determinations:

- A. Determination of misuse of payments by a representative payee;
- B. Method of recovering an overpayment (e.g., by withholding part of a regular monthly payment, netting against an underpayment, etc.);
Note: The amount to be withheld is an initial determination. (See §2189 (Y).)
- C. Compromise settlement for an overpayment;
- D. Representative's fees (i.e., a finding as to the amount an attorney or other representative may charge for representing a claimant before SSA);
- E. Eligibility for and the amount of an emergency advance payment;
- F. Eligibility for presumptive disability or presumptive blindness payments;
- G. Timing and frequency of payment;
- H. Termination of eligibility after 12 months in a row of suspension;

- I. Finding that a prior determination may not be re-opened or revised under the rules of administrative finality;
- J. Finding that the expedited appeals process does not apply;
- K. Finding that good cause for extending the appeals period does not exist;
- L. Findings based on income estimates for a future period (Any changes of income estimates are handled as redeterminations.);
- M. Reduction, suspension, or termination of the federally administered State supplementary payment;
- N. Denial of a request to be made a representative payee;
- O. Disqualifying or suspending a person from acting as a representative in connection with a proceeding before SSA;
- P. Determining whether (and the amount of) travel expenses incurred are reimbursable in connection with a proceeding before SSA; and
- Q. Denying a request to re-adjudicate a claim and apply an Acquiescence Ruling.

2191. How does the appeals process work?

An eligible individual or eligible spouse who is a recipient or applicant for SSI payments has a right to appeal our decision as to eligibility or amount of payment. Time limits apply to each step in the appeals process. Extensions are possible if good cause for the delay can be established. (See §2196.) For the purpose of determining the expiration of a time limit, a notice or decision is presumed to have been received within five days of its date, unless there is evidence to the contrary.

The appeals process consists of four levels described in §§2192-2195 and is to be pursued in the order shown.

2192. Reconsideration.

2192.1. What is the time limit for requesting a reconsideration?

You must request a reconsideration within 60 days after receiving notice of our determination. We presume that you receive the notice no later than five days following the date of the notice, unless you show the notice was received later or not at all.

2192.2. What are your appeal options?

You have three options when requesting reconsideration:

- A. **Case Review**-An independent review of the record with or without additional evidence. This is the only option available in cases involving the medical aspects of a disability denial of an initial application;

- B. Informal Conference**-A review as in (A) above in which you may participate. You may present witnesses and may present the case in person; or
- C. Formal Conference**-Same as (B) above and you may request that adverse witnesses be issued a subpoena and cross-examined by you or a representative. This type of reconsideration applies only in adverse post-eligibility situations (i.e., when your SSI payments are going to be reduced, suspended, or terminated).

2192.3. Who can request reconsideration?

Reconsideration of an initial determination may be requested by the claimant or by the eligible spouse. An initial determination may also be reexamined by SSA on its own motion. (See §2197.)

2192.4. How do you request a reconsideration?

You must request the reconsideration in writing within 60 days of receipt of the notice of the initial determination. If the initial determination involves an adverse post-eligibility issue (e.g., a hearing in a medical/blindness cessation case), you must request reconsideration within 10 days of receipt of the notice of initial determination. This will ensure payment continues until we make a reconsideration determination, pending an initial appeal decision. Make the request on a special form available at any Social Security office or by letter.

2192.5. How does the reconsideration process work?

The reconsideration process is a thorough and independent review of your case. It is based on the evidence you submitted for the initial determination plus any further evidence you submit in connection with the reconsideration.

A reconsideration is made by a member of the Social Security office staff who was not involved in the initial decision under appeal. This person has been trained in handling reconsiderations.

2193. Hearing.

2193.1. What is a “hearing”?

A “hearing” is the first step of an appeal in cases involving termination of benefits because of cessation of disability or blindness due to medical factors. They are held before an administrative law judge (ALJ) of SSA's Office of Hearings and Appeals. You may appear, additional evidence may be submitted, and witnesses may be called.

The hearing is a thorough review of your record. You or your representative may appear in person. The ALJ makes a decision based on the evidence already submitted, any additional evidence you provide, evidence that is otherwise submitted, and any testimony given at the

hearing. The ALJ has authority to issue subpoenas requiring the attendance and testimony of witnesses and the producing of any evidence that relates to the issues involved in the hearing.

2193.2. How do you request a hearing?

You must request a hearing within 60 days of receipt of the reconsidered determination. A hearing may be requested in writing by you, your eligible spouse, or a representative payee who disagrees with the reconsidered determination.

Make the request for a hearing on a special form available at any Social Security office or by letter. File the request with the Social Security office, an ALJ, or with the Appeals Council.

2193.3. What is done after you request a hearing?

Upon reviewing your request for a hearing, the ALJ may:

A. Dismiss the case if:

1. You request it;
2. You do not appear at a scheduled hearing;
3. You did not file the request within the time limit;
4. You were not a party to the reconsideration; or
5. There has been a previous determination or decision as to your rights on the same facts and issues now present, which has become final; or

B. Hold a hearing on the case and issue a decision.

2193.4. How are you notified of a scheduled hearing?

The ALJ sends you and all other parties involved notice of the time and place of the hearing at least 10 days before the date set. This allows you time to prepare for it. The hearing before the ALJ is usually held in the area where you live, although you may be required to travel up to 75 miles. Hearings are held in the 50 States, the District of Columbia, and the Northern Mariana Islands.

2193.5. What help does SSA provide in preparing for the hearing?

The Social Security office is ready to help you prepare for the hearing by:

- A. Explaining the issues involved in the case;
- B. Explaining how the hearing will be conducted;
- C. Explaining how to arrange for the appearance of witnesses; and
- D. Advising how to obtain any documents that you may need for the presentation of the case.

2193.6. Do you need a representative?

You may represent yourself, be represented by an attorney, or by any other person you select to have represent you. However, you do not have to be represented by anyone.

2193.7. What happens after the hearing?

After the hearing, the ALJ issues a decision affirming, revising, or reversing the reconsidered determination. The ALJ may also certify the case with a recommended decision to the Appeals Council for decision (though this would happen very infrequently). All parties to the hearing are notified of the ALJ's decision and the reasons for it.

2194. Appeals Council review.

2194.1. Why would you request an Appeals Council review?

You may request a review by the Appeals Council if you are not satisfied with the action of the ALJ, whether a decision or dismissal. The Council will grant, deny, or dismiss your request for review as it decides is proper.

2194.2. How do you request an Appeals Council review?

You must make a request for a review by the Appeals Council in writing. File your request within 60 days from the date of receipt of the notice of the decision of, or dismissal by, the ALJ. The request may be filed with any Social Security office, an ALJ, or the Appeals Council. You can make the request by letter or on a special form available at any Social Security office.

2194.3. What does the Appeals Council do with the request for review?

The Appeals Council makes a thorough inspection of your claim and notifies you as to whether or not it will review your case.

If the Council decides to review your case, you may appear before the Appeals Council in Arlington, Virginia (either personally or through a representative). At the review, you may present oral arguments or file written briefs in support of your claim. After the review, the Appeals Council notifies you of its action in the case.

2195. What is the time limit for filing for civil action in a Federal District Court?

You must file for civil action in a Federal District Court within 60 days of:

- A. Receipt of the Appeals Council's notice of denial of the request for review of the ALJ's decision; or

B. Receipt of the Appeals Council's revised decision.

The court's jurisdiction is limited to rendering a decision on the record. Also, the Secretary of Health and Human Services findings of fact are binding on the court, if supported by substantial evidence.

2196. Can the time limit for filing an appeal or hearing be extended?

Your time limit for filing a request for reconsideration, hearing, or review by the Appeals Council may be extended if you show you had good cause for failing to file the request within the appropriate time limit. The decision as to whether or not to grant the extension is made by the office responsible for making the reconsideration, by the ALJ, or by the Appeals Council, depending upon whom has jurisdiction over the case.

2197. Reopening determinations/decisions under the rules of administrative finality.

2197.1. Can final decisions/determinations be reopened?

Even though a determination, revised determination, decision, or revised decision has become final, it may be reopened and revised by the Social Security field office, reviewing office, ALJ, or Appeals Council within certain time limitations and under certain conditions.

We may decide to reopen a determination or decision on our own or as the result of receiving a written request from a claimant, eligible spouse, or representative payee. The decision to reopen or not to reopen is not an initial determination and is not subject to appeal.

2197.2. How are decisions reopened?

Determinations or decisions may be reopened as follows:

- A. Within 12 months from the date of notice of the initial determination for any reason;
- B. After such 12-month period but within two years from the date of notice of the initial determination if there is "good cause" for reopening it. "Good cause" may exist when:
 1. New and material evidence is submitted;
 2. A clerical error was made; or
 3. The evidence that was considered in making the determination clearly shows that an error was made.

Note: "Good cause" does not exist where the only basis for reopening the determination or decision is a change of legal interpretation or administrative ruling on which the determination or decision was based.

4. At any time if it was obtained by fraud, or an unintentional act that results in fraud, by the claimant or some other person.

CHAPTER 22

BLACK LUNG BENEFITS

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2200. General information.

2200.1. Who can receive black lung benefits?

The black lung benefits program provides a monthly cash benefit to:

- A. A coal miner who is totally disabled due to pneumoconiosis. The miner's payment may be augmented to provide for a dependent wife, divorced wife, or children;
- B. The widow, child, surviving divorced wife, parent, brother, or sister of a miner who:
 - 1. Was entitled to black lung benefits at the time of death;
 - 2. Was totally disabled by pneumoconiosis at the time of death; or
 - 3. Died from pneumoconiosis; or (See §2248 regarding the payment of benefits to survivors of certain miners under the Black Lung Benefits Reform Act of 1977.)
- C. The child of a widow who was entitled to benefits at the time of her death.

2200.2. What organizations are responsible for the black lung benefits program?

The Federal Coal Mine Health and Safety Act of 1969 assigned the initial responsibility for accepting and processing claims for black lung benefits to us, the Social Security Administration (SSA). The Department of Labor was designated to assume eventual responsibility. The Department of Labor now deals with other features of the law that pertain to mines and safety.

Beginning October 1, 1997, DOL assumed responsibility for all maintenance actions and benefit payment adjustments for all active Part B Black Lung beneficiaries and those terminated April 1996 or later. This transfer of responsibility was accomplished under a Memorandum of Understanding signed by SSA and DOL on September 26, 1997.

Ultimate responsibility for policy and administration of the Part B Black Lung program still rests with SSA. SSA is responsible for decisions made for cases appealed from the hearing level and above. DOL is responsible for benefit payment adjustments of each active, suspended, or terminated Part B claim.

2200.3. Where are black lung benefit application processed?

SSA continues to accept applications. The claims filed from enactment to June 30, 1973, remain within our jurisdiction. We also process and

pay claims of survivors of these miners for claims filed within six months of the miner's death. We forward claims filed after June 30, 1973, to the Department of Labor for processing and payment. This Chapter deals with the conditions of entitlement as administered by SSA.

2200.4. What is the Black Lung Benefits Reform Act of 1977?

The Black Lung Benefits Reform Act of 1977 was enacted on March 1, 1978. It expanded some of the conditions of entitlement to cash monthly benefits. Under the act, denied or undecided claims filed under our jurisdiction can be reviewed by SSA or the Department of Labor.

No benefits under this law may be paid for periods before January 1, 1974. (Provisions of this law are explained in §2248.)

(See Chapter 16 for discussion of payment to a representative payee on behalf of a beneficiary; Chapter 19 for procedures relating to underpayments and overpayments; and Chapter 20 for procedures relating to reconsiderations, hearings, and appeals.)

2201. What miner's are eligible for black lung benefits?

To be entitled to black lung benefits as a miner (see §2202), you must:

- A. Be a coal miner;
- B. Be totally disabled by pneumoconiosis;
- C. Have pneumoconiosis due to your employment in the Nation's coal mines; and
- D. Have filed a timely application for benefits.

2202. Who is considered a “miner”?

You are a “miner” if:

- A. You work or worked as an employee under the usual common-law rules (See §§802-823) in a coal mine, whether underground or above ground; and
- B. You work or have worked around a coal mine or a place that digs and/or prepares coal.

(See §2248 for the definition of “miner” under the Black Lung Benefits Reform Act of 1977.)

2203. What is a “coal mine”?

A “coal mine” is an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, used to dig and/or prepare bituminous coal, lignite, or anthracite from the earth's natural deposits.

2204. Evidence of employment as miner.

2204.1. What information must evidence of employment as a miner contain?

When you provide evidence showing that a worker was a miner, the evidence must:

- A. Identify the miner;
- B. Contain the job title “miner” or similar term; and
- C. Indicate that the person was employed in or around a mine.

2204.2. What can be submitted as evidence?

Evidence that proves a worker was a miner includes:

- A. Employers' records;
- B. Union records;
- C. Miner's certificates granted by State authorities;
- D. Union card;
- E. Copies of letters;
- F. United Mine Workers' Form 85-HS;
- G. Copies of tax returns;
- H. Insurance policies;
- I. Military discharge or rating forms;
- J. Marriage license or application duplicate;
- K. Birth certificates of children;
- L. Death certificate;
- M. Workers' compensation records;
- N. SSA records;
- O. Medical records;
- P. Census records; and
- Q. Affidavits of fellow workers.

2205. How does SSA make a black lung disability decision?

We can only make a disability finding if pneumoconiosis is the disabling impairment. Whether or not pneumoconiosis is disabling is determined from all the evidence in each particular case. Although we give primary consideration to the severity of the person's pneumoconiosis, we also consider other factors such as the person's age, education, and work experience.

2206. What is “pneumoconiosis”?

“Pneumoconiosis” means:

- A. A chronic dust disease of the lung resulting from employment in or around the Nation's coal mines. It includes:
 - 1. Coal workers' pneumoconiosis;
 - 2. Anthracosilicosis;
 - 3. Anthracosis;
 - 4. Anthrosilicosis;
 - 5. Massive pulmonary fibrosis;
 - 6. Progressive massive fibrosis;
 - 7. Silicosis; or
 - 8. Silicotuberculosis;
- B. Any other chronic respiratory or lung impairment when the conditions are met for the application of the presumption referred to in §2212.2; or
- C. Any respiratory disease when the conditions are met for the application of the presumption referred to in §2212.5.

(See §2248 for the definition of pneumoconiosis under the Black Lung Benefits Reform Act of 1977.)

2207. When is a miner totally disabled by pneumoconiosis?

A miner is under a total disability due to pneumoconiosis if:

- A. The miner is suffering or suffered from a chronic dust disease of the lung that:
 - 1. When diagnosed by chest roentgenogram (X-ray), shows one or more large opacities (greater than 1 centimeter in diameter) and would be classified in Category A, B, or C (i.e., as “complicated pneumoconiosis”), in:
 - a. The ILO-U/C International Classification of Radiographs of Pneumoconiosis, 1971;
 - b. The International Classification of the Radiographs of the Pneumoconiosis of the International Labor Office, Extended Classification (1968); or
 - c. The Classification of the Pneumoconiosis of the Union Internationale Contra cancer/Cincinnati (1968); or
 - 2. When diagnosed by biopsy or autopsy shows massive lesions in the lung, i.e., shows the existence of progressive massive fibrosis; or

3. When diagnosed as a condition that could reasonably be expected to yield the results described above; provided, however, that any diagnosis is made according to generally accepted medical procedures for diagnosing pneumoconiosis.

Note: If the requirements of (1), (2), or (3) above are met, the finding that a miner is under a total disability cannot be contested.

- B. The miner is unable to do similar and gainful work because of pneumoconiosis. The pneumoconiosis is expected to cause the death of the miner or is expected to last for a continuous period of at least 12 months. (See §2248(C) for the application of this provision under the Black Lung Benefits Reform Act of 1977.)

2208. What is “comparable and gainful work”?

“Comparable and gainful work” is work:

- A. Within the immediate area of residence;
- B. Requiring skills and abilities comparable to those of any work in a mine or mines; and
- C. Similar to the type of work the miner did before with some regularity and over a substantial period of time.

2209. Is total disability more restrictive for black lung benefits?

No. Total disability cannot be more restrictive for black lung benefit purposes than for Social Security disability benefit purposes. (See Chapter 6.)

2210. How does SSA make a decision as to whether a miner is disabled because of pneumoconiosis?

We base our decision as to whether a miner is disabled by pneumoconiosis on medical information, such as:

- A. History of exposure to coal dust and resulting disease;
- B. X-ray changes indicating presence of the disease;
- C. Lung function abnormalities; and
- D. Relevant clinical and laboratory findings relating to the cardiopulmonary system, e.g., cardiac enlargement, vascular congestion, and edema.

Although the results of a chest X-ray alone can be used to establish the existence of pneumoconiosis, X-ray evidence alone is not enough to show that pneumoconiosis does **not** exist.

2211. What types of evidence show pneumoconiosis?

The following evidence may support a finding of pneumoconiosis:

- A. A chest X-ray showing the existence of pneumoconiosis classified as Category 1, 2, 3, A, B, or C, according to the ILO (1971), ILO Classification (1968) or UICC/Cincinnati (1968) Classification;
- B. An autopsy; or
- C. A biopsy (other than a needle biopsy). (See §2248(D) on the acceptance of affidavits and §2248 (E) on the X-ray rereading prohibition under the Black Lung Benefits Reform Act of 1977.)

2212. Presumptions applicable.

2212.1. Can a presumption that a miner was totally disabled or died due to pneumoconiosis be contested?

Yes. It may be contested that a miner was totally disabled or died due to pneumoconiosis. This is true even if the disease is not established by chest X-ray, biopsy, or autopsy.

2212.2. When is it presumed that a miner is totally disabled due to pneumoconiosis?

We presume, in the absence of evidence to the contrary, that a miner is totally disabled due to pneumoconiosis, or was totally disabled by pneumoconiosis at the time of death if:

- A. The person was employed for at least 15 years in or around the Nation's coal mines; and
- B. Other evidence shows a totally disabling chronic respiratory or lung impairment.

2212.3. Can the presumption be contested?

The presumption can be contested only if:

- A. It is established that the individual does not have pneumoconiosis; or
- B. The respiratory or lung impairment did not arise as a result of or in connection with employment in a coal mine.

2212.4. What if the miner worked less than 15 years in a coal mine?

If a miner worked less than 15 years in a coal mine, the claimant must prove the existence of pneumoconiosis. A mere showing of respiratory or lung impairment is not sufficient.

2212.5. When is it presumed that a miner died from pneumoconiosis?

We presume, in the absence of evidence to the contrary, that a miner died from pneumoconiosis if:

- A. The person worked 10 years or more in the Nation's coal mines; and
- B. Died from a respiratory disease.

2213. How can you receive black lung benefits?

If you are entitled to black lung benefits, you must file an application. You can obtain the special form for applying from any Social Security office. You cannot receive benefits for any months before you file the application (except with respect to surviving children (see §2241)). Therefore, if you are eligible, apply for benefits as soon as possible. A written statement to any Social Security office can protect the beginning date for benefits payable; however, you must complete a valid application form before we process your claim.

2214. Time limits for filing claim.

2214.1. What is the time limit for filing a claim for black lung benefits?

If a miner was entitled to benefits for the month before the month of death, a claim by the widow, surviving divorced wife, child, parent, brother, or sister must be filed **within six months after death**. If a widow is entitled to benefits, a claim by a surviving child of the miner or of the miner's widow must be filed within six months after the death of the miner or widow. (See §2239.)

2214.2. Where are black lung benefit claims processed?

The Department of Labor (DOL) processes Part B Black Lung actions and adjustments.

2215. Withdrawal of claim.

2215.1. Can you withdraw your claim for black lung benefits?

You can withdraw a claim for benefits before or after we make a decision on the claim. Make your request for withdrawal in writing.

Note: The claimant must be alive at the time the request is filed.

2215.2. Do you need to repay benefits if you withdraw a claim after SSA makes a decision on the claim?

Yes. If you request withdrawal after we make a decision on the claim and benefits have been paid, you must repay the benefits. We must receive the repayment (or your assurance that the benefits will be repaid) before we approve your request to withdraw the claim.

2215.3. Can you cancel your request to withdraw a claim?

Yes. You can cancel your request to withdrawal a claim and have it reinstated and processed. File a written request for cancellation no later than 60 days after we approved the withdrawal request.

Note: The claimant must be alive at the time the request is filed.

2216. What is the basic black lung benefit amount?

The basic black lung benefit for a disabled miner is equal to 37 1/2 percent (.375) of the minimum monthly payment to a Federal employee in Grade GS-2. If the basic benefit is not an even dollar amount, it is rounded down to the next lower dollar amount.

2217. Augmentation of miner's benefit for dependent.

2217.1. Is the basic benefit augmented for dependents?

Yes. A miner's basic benefit is augmented if he has a wife (see §306) or a child or children (see §333) who are dependent upon him. (See §2223 for dependency requirements for a wife and §2226 for dependency requirements for a child.)

2217.2. Is the basic benefit augmented if a miner has a divorced wife?

Yes. A miner's basic benefit is augmented if he has a divorced wife, and:

A. She was married to him for 20 years before the divorce; and

Note: For monthly benefits payable after December 1978 on the basis of an application filed after January 1, 1979, she must have been married to him for 10 years prior to the divorce.

B. Either:

1. She is receiving at least one-half of her support from him;
2. She is receiving substantial contributions from him under a written agreement; or
3. He is under court order to make substantial contributions to her support.

2218. How much is the basic benefit augmented for dependents?

A miner's basic benefit is augmented as follows:

A. 50 percent for one dependent;

B. 75 percent for two dependents; and

C. 100 percent for three or more dependents.

2219. Who receives the augmented benefit payable for a dependent?

We pay the augmented benefit payable directly to the dependent or to some other person for use on his or her behalf, where the interests of the dependent are best served. (See Chapter 16.)

2220. Reduction of benefits.

2220.1. When are black lung benefits reduced?

Black lung benefits are reduced when:

- A. The beneficiary receives:
 - 1. State workers' compensation, including compensation for occupational disease;
 - 2. Unemployment compensation; or
 - 3. State disability insurance because of the disability of the miner due to pneumoconiosis; or
- B. The miner or survivor (other than widow or child) works and has excess earnings (as defined in §1802).

Note: Black lung benefits are not reduced due to the receipt of Social Security disability insurance benefits or supplemental security income benefits.

2220.2. How much is the reduction amount?

Black lung benefits are reduced by the same amount as Social Security benefits with respect to excess earnings (See §§1802-1813).

2221. How long do your miner benefits last?

Your black lung benefits as a miner begin when you meet the requirements in §2201. They end when:

- A. You die; or
- B. Your disability ends.

No benefit is payable for the month of death. Survivor benefits (see §2229) may be payable beginning with the month of death.

2222. Who is considered the wife of a miner?

You are the wife of a miner if you would be his wife under the rules in §306.

2223. When is a miner's wife dependent on the miner?

You are the dependent wife of the miner if you:

- A. Are the natural mother of his son or daughter;
- B. Were validly married to him for at least one year;

- C. Are a member of his household;
- D. Are receiving regular and substantial contributions from him for support; or
- E. He is under a court order to contribute to your support.

2224. When does the miner's benefit augmentation for a dependent wife end?

As a dependent wife of the miner, your benefit augmentation ends when:

- A. You are divorced from the miner and you do not meet the requirements of a dependent divorced wife;
- B. Your marriage to the miner is annulled;
- C. You are not the natural mother of the miner's son or daughter and:
 - 1. You have not been married to the miner for a least one year;
 - 2. You are living apart from the miner;
 - 3. You no longer receive regular and substantial contributions from the miner for support; and
 - 4. There is no court order for the miner to contribute to your support; or
- D. You no longer qualify as the miner's "de facto" wife (see §306);
- E. You no longer qualify as the miner's divorced wife (see §311);
- F. The miner's entitlement ends; or
- G. You die.

2225. Who is considered the child of a miner?

A claimant is a child of a miner if he or she meets one of the definitions listed in §411.

2226. When is a child dependent on the miner?

A child is dependent on a miner if he or she is:

- A. Unmarried; and
- B. Either:
 - 1. Under age 18; or
 - 2. Age 18 or over and either under a disability (see §507) or a student as defined in §2227.

2227. Student defined.

2227.1. Who is considered a student?

A student is a person age 18 or older who:

- A. Is a student as defined for Social Security purposes (see §§341-345);
or
- B. Is a student as defined in Volume 5 of the United States Code Section 8101(17). Under this provision, a student is:
 - 1. A person under age 23 who has not completed four years of education beyond high school level; and
 - 2. Regularly pursuing a full-time course of study at a “qualified educational institution” (see definition below).

Note: A student who completes four years of education beyond the high school level or whose 23rd birthday occurs during a semester or other enrollment period continues to be considered a student until the end of that semester or other enrollment period.

2227.2. What is a “qualified educational institution”?

The term “qualified educational institution” means a school, college, or university that:

- A. Is operated or directly supported by:
 - 1. The U.S.;
 - 2. A State or local government; or
 - 3. A political subdivision of the governmental unit;
- B. Has been approved by a State, or accredited by a State-recognized or nationally recognized accrediting agency; or
- C. Is unaccredited, but its credits are accepted on transfer by at least three accredited institutions on the same basis as if the credits had been transferred from an accredited institution.

Note: Public and private high schools, trade or vocational schools, and colleges and universities are included under this definition if they meet the requirements of either (A), (B), or (C) above.

2228. Termination of augmentation for child.

2228.1. When does the benefit augmentation for a disabled child end?

The benefit augmentation for a dependent child ends when:

- A. The child dies;
- B. The child marries;
- C. The child turns age 18, is not disabled, and is not a student as defined in §2227;
- D. The child is no longer under a disability, unless a student as defined in §2227;

- E. The child is no longer a student as defined in §2227, unless under a disability; or
- F. The miner's or the widow's entitlement ends.

2228.2. When does the benefit augmentation for a child whose eligibility is based on student status end?

If a child's entitlement is based on his or her status as a student, the child's benefit augmentation ends the earlier of:

- A. The first month during which he or she is not a full-time student for any part of the month;
- B. The month he or she completes four years of education beyond high school level; or
- C. The month he or she turns age 23 and is not under a disability.

2228.3. Does the two-month benefit extension apply after a disability ends?

No. The two-month benefit extension after a disability ends does not apply for black lung benefit purposes, even though it applies under the Social Security Act (see §506).

2229. What are the types of survivors benefits payable?

Survivors benefits are payable as follows:

- A. Widow's benefits (§2232);
- B. Surviving divorced wife's benefits (§2236);
- C. Child's benefits (§ 2239);
- D. Dependent parent's benefits (§2243); and
- E. Dependent brother's or sister's benefits (§2243).

2230. When is a miner presumed to have died from pneumoconiosis?

A miner is presumed to have died from pneumoconiosis if:

- A. The miner suffered from a chronic dust disease of the lung that meets the requirements of §2207; or
- B. The miner was employed for at least 10 years in the Nation's coal mines and died from any respiratory disease.

The presumption in (A) is irrebuttable. The presumption in (B) applies if there is no evidence to the contrary.

2231. Who is considered a widow of a miner?

You are the widow of a miner if you would be his widow under the rules in §402.

2232. When is a widow entitled to benefits?

You are entitled to benefits as a miner's widow if:

- A. You are the widow (see §402) of a miner who was entitled to black lung benefits in the month before he died;
- B. You are not married;
- C. You file a claim within six months after his death; and
- D. You were dependent or deemed dependent on him when he died.
(See §2233.)

2233. When is a widow is dependent on a miner?

As a widow, you are dependent or deemed dependent on a miner at the time of his death if any of the conditions below are met:

- A. You were living with him as his wife in the same residence;
 - B. You were dependent upon him for support;
 - C. He was under court order to contribute to your support;
 - D. You were living apart from him because of his desertion or other reasonable cause;
 - E. You are the natural mother of his son or daughter;
 - F. You had legally adopted his son or daughter or he had legally adopted your son or daughter during your marriage before the child turned age 18;
 - G. You both legally adopted a child under age 18 during your marriage; or
 - H. You were married to him for at least nine months just before he died, unless death:
 - 1. Was accidental (as defined in §404); or
 - 2. Occurred in the line of duty while he was a member of a uniformed service serving on active duty (as defined in §950).
- Note:** If the miner died under (1) or (2) above, he must have been expected to live for at least nine months when you married him.

2234. How much is a widow's benefit augmented for dependent children?

Your widow's basic benefit amount is the same as that of a miner. It is augmented in the same amount as that of a miner if you have a dependent child or children. (See §2218.)

2235. How long do widow's benefits last?

Your widow's benefit begins when you meet the requirements of §2232. The benefit ends when you:

- A. Remarry; or
- B. Die.

Note: The entitlement of a widow based on an invalid ceremonial marriage (as defined in §402) ends when another person is found to be the legal widow.

2236. Who is considered a surviving divorced wife of a miner?

You are the surviving divorced wife of a miner if you were married to him for the 20 years immediately before the date the divorce became final.

Note: For benefits payable after 1978, the 20-year requirement was reduced to 10.

2237. When is a surviving divorced wife entitled to benefits?

As a surviving divorced wife, you are entitled to benefits if:

- A. You are divorced from the miner who had been entitled to black lung benefits at the time of his death;
- B. You were married to the miner for a period of 20 years (10 years after 1978 (see §2236)) immediately before the divorce became final;
- C. You were dependent upon the miner (see §2238);
- D. You are not married; and
- E. You file an application within six months of the miner's death.

Note: Benefits end under the same conditions that apply to a widow. (See §2235.)

2238. When is a surviving divorced wife dependent on a miner?

You are dependent on a miner as a surviving divorced wife at the time of his death if, for the month before the month the miner died:

- A. You were receiving at least one-half of your support from him;
- B. You were receiving substantial contributions from him under a written agreement; or
- C. There was a court order in effect for substantial contributions to your support from the miner at the time of his death.

2239. Eligibility requirements for surviving child's benefits.

2239.1. How is a surviving child of a miner entitled to benefits?

A surviving child is entitled to benefits in his or her own right. This is different from a child who qualifies as a dependent of a miner or of a miner's widow.

2239.2. How does a surviving child of a miner qualify for benefits?

In order to qualify for surviving child benefits of a miner, the child must:

- A. Be a child, as defined in §324, (except grandchild or step-grandchild) of a deceased miner or of the deceased widow of a miner who was entitled to black lung benefits at the time of death;
- B. Be unmarried;
- C. Be under age 18, or age 18 or older if:
 - 1. Under a physical or mental disability that began before age 18 or, if older, while still a student; or
 - 2. Under age 23 and a full-time student; and
- D. Apply for benefits within six months of the death of the father or mother, whichever occurred last.

Note: A child is not entitled to benefits as a surviving child for any month a widow establishes entitlement to benefits as a widow.

2240. How long do surviving child's benefits last?

The surviving child's benefit begins when he or she meets the requirements in §2239. The benefit ends when any of the conditions below are met:

- A. He or she dies;
- B. He or she marries;
- C. He or she turns age 18, is not under a disability, and is not a student as defined in §2227;
- D. If his or her entitlement is based on status of student, the earlier of:
 - 1. The first month during which he or she is not a full-time student for any part of the month;
 - 2. The month he or she turns age 23; or
 - 3. The month he or she completes four years of education beyond high school level;
- E. The miner's widow becomes entitled to black lung benefits; or

F. If his or her entitlement is based on disability, the first month the child is not disabled for any part of the month.

2241. Can a child's benefit be paid for months before a claim is filed?

Yes. A child's benefit may be payable for no more than 12 months before a claim is filed.

2242. Parent, brother, and sister defined.

2242.1. Who is considered a parent, brother, or sister of a miner?

A claimant is a parent, brother, or sister of the miner if, under "applicable law," he or she would have the status of parent, brother, or sister with respect to the taking of intestate personal property.

2242.2. What does under "applicable law" mean?

Applicable law is either:

- A. The law applied by the courts of the State where the insured person lived at the time he or she died; or
- B. The law applied by the District of Columbia if the insured person was not living in any State at the time of his or her death.

2243. Eligibility requirements for benefits of parent, brother, or sister.

2243.1. When is a surviving parent, brother, or sister entitled to benefits?

A surviving parent, brother, or sister of a miner is entitled to benefits if all of the conditions below are met:

- A. The miner was entitled to benefits at the time of death;
- B. The individual is the parent, brother, or sister of the miner as defined in §2242;
- C. The individual was living in the same household and was totally dependent on the miner during the year just before the miner died;
- D. The individual applies for benefits and files proof of support within two years after the miner died; and

Note: The time limit for filing proof of support may be extended for good cause. (See §1519.)

- E. In the case of a brother, he meets the conditions of entitlement for a child of a miner in §2226 or is under a disability that began at or before the miner's death.

2243.2. When is a parent NOT entitled to benefits?

A parent is not entitled to benefits if the miner was survived by a widow or child.

2243.3. When is a brother or sister NOT entitled to benefits?

A brother or sister is not entitled to benefits if the miner was survived by a widow, child, or parent.

2244. Duration of benefits of parent, brother, or sister.

2244.1. When do parent, brother, or sister benefits begin?

Benefits of a parent, brother, or sister begin with the month all of the conditions in §2243 are met.

2244.2. Can a married brother or sister qualify for benefits?

To qualify for benefits, a brother or sister may be married before the miner's death, but not after.

2244.3. When do parent's benefits end?

Parent's benefits end when the parent dies.

2244.4. When do sister's benefits end?

A sister's benefits end when she:

- A. Receives support from her spouse;
- B. Marries; or
- C. Dies.

2244.5. When do brothers' benefits end?

A brother's benefits end when:

- A. He marries;
- B. He receives support from his spouse;
- C. He turns age 18, is not under a disability, and is not a student as defined in §2227;
- D. If his entitlement is based on status of student, the earlier of:
 - 1. The first month during which he is not a full-time student for any part of the month;
 - 2. The month he turns age 23; or
 - 3. The month he completes four years of education beyond high school level;
- E. If his entitlement is based on disability, the first month he is not disabled for any part of the month; or
- F. He dies.

2245. What is the survivor benefit amount?

A surviving child's, parent's, brother's, or sister's benefit equals the benefit payable to a miner who has no dependents. However, these rates may be reduced if the beneficiary:

- A. Receives State workers' compensation (including compensation for occupational disease);
- B. Receives unemployment compensation;
- C. Receives State disability insurance because of the disability of the miner due to pneumoconiosis; or
- D. Has excess earnings. (See §§1802-1813.)

2246. Reports of events affecting eligibility or benefit amount.

2246.1. Do you need to report events that affect your eligibility for benefits?

You must report events or changes in circumstances that affect your eligibility for benefits or your benefit amount. If you do not report such events, your benefit payments will be reduced or you will have to repay any amounts incorrectly paid.

2246.2. What types of events must you report?

You must report events that affects your right to or the amount of benefits, such as:

- A. A change in earnings income;
- B. Marriage or divorce;
- C. Change in school attendance;
- D. Death of a dependent; or
- E. Improvement in your condition or that of a dependent.

2247. What can you do if you do not agree with a decision made on your claim?

If you are not satisfied with our decision on your claim, get in touch with any Social Security office to request further consideration. If you are still not satisfied, you may have a hearing, Appeals Council review, and judicial review. (See Chapter 20.)

2248. What are the provisions of the Black Lung Benefits Reform Act of 1977?

The provisions of the Black Lung Benefits Reform Act of 1977:

- A. Expand on the definition of "miner" in §2202 to include:
 - 1. Self-employed miners;

2. Certain persons who process and transport coal; and
 3. Miners involved in coal mine construction;
- B. Expand on the definition of “pneumoconiosis” in §2206 to include its aftereffects, including lung and respiratory impairments;
- C. Provide that in determining total disability (see §2207):
1. Coal mine employment is not conclusive evidence that the miner is not totally disabled if the work conditions of a living miner indicate a reduced ability to do the miner's usual work;
 2. Coal mine employment at the time of the miner's death is not conclusive evidence that the miner was not totally disabled; and
 3. Any miner not totally disabled by complicated pneumoconiosis who has been determined to be eligible for benefits because of a claim filed while the miner was engaged in coal mine employment is entitled to these benefits if his or her coal mine employment ends within one year after the date the determination becomes final;
- D. Provide that, in the case of a deceased miner where there is no medical (see §2211) or other relevant evidence, affidavits from the spouse and other persons having knowledge of the deceased miner's physical condition is enough to establish total disability due to pneumoconiosis, if they are already in file. Proof of the miner's death is required in all claims for black lung benefits by survivors;
- E. Prohibit the rereading of a chest X-ray (see §2211) submitted by the claimant if:
1. The X-ray was taken by a radiologist or qualified technician;
 2. The X-ray was interpreted by a board certified or board eligible radiologist; and
 3. There is other evidence of a lung or respiratory impairment, unless there is evidence of fraud or the quality of the X-ray is not good enough to establish the presence of pneumoconiosis.
- F. Provide that survivors of miners, who died before March 2, 1978, can receive benefits if the miner had 25 or more years of coal mine employment before June 30, 1971, unless it can be proved that the miner was not partially or totally disabled due to pneumoconiosis at the time of death. (See §2212.2)

CHAPTER 23

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INTRODUCTION

2300. Basic objectives of benefit programs.

2300.1. What is the purpose of Social Security and other benefit programs?

Social Security and other benefit programs have the same basic objectives:

- A. To keep individuals and families from poverty;
- B. To help individuals and families attain economic and personal independence;
- C. To keep families together; and
- D. To give children the chance to grow up healthy and secure.

2300.2. What programs are included?

The programs, most of which are carried out through the efforts of the Federal Government and the various States, include:

- A. Retirement insurance;
- B. Survivors insurance;
- C. Disability insurance;
- D. Hospital and medical insurance for the aged and disabled;
- E. Black lung benefits;
- F. Supplemental security income (SSI);
- G. Administration for Children and Families;
- H. Unemployment insurance;
- I. Medical assistance;
- J. Food stamp supplements;
- K. Child support enforcement and establishment of paternity;
- L. Services for maternal and child health and child welfare;
- M. Workers' compensation;
- N. Railroad retirement, sickness, and unemployment insurance;
- O. Veterans benefits; and
- P. Federal, State, and local government employees' retirement systems.

The first six of these programs are explained in the preceding chapters of this Handbook. The major provisions of the other programs are discussed below.

UNEMPLOYMENT INSURANCE

2301. The unemployment insurance program.

2301.1. What is the unemployment insurance program?

The Unemployment Insurance Program provides partial income replacement for a limited time to people who become unemployed. It is a State-administered program with Federal participation.

2301.2. What is considered a “State” for unemployment insurance purposes?

“State” for unemployment insurance purposes means the 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands.

2301.3. How does unemployment insurance affect employer taxes?

If a State has an unemployment insurance law that meets the basic provisions of the Federal law, employers can credit their State taxes against the Federal tax. In order for employers to obtain the tax offset provided by the Federal law, the State unemployment insurance system must continue to follow the general requirements in the Federal law. This offset also extends to the taxes the employer is excused from paying by provisions of State law that vary the tax rate according to the employer's experience with unemployment. This is called “experience rating” and is provided for in all jurisdictions.

In many States, the law applies to employers who are engaged in types of work not covered by the Federal law. In three States, employees are also taxed.

2301.4. How do you receive unemployment insurance benefits?

For Federal income tax purposes, unemployment insurance benefits are included in your gross income, regardless of your other income.

2302. Requirements set by each State.

2302.1. What is included in State laws regarding unemployment benefits?

Each State specifies in its laws:

- A. Who may receive unemployment benefits;
- B. How each worker qualifies for benefits;
- C. The amount of the weekly unemployment benefit; and
- D. The maximum number of weeks unemployment benefits may be paid.

2302.2. What does the State unemployment insurance agency do?

The State unemployment insurance agency is responsible for:

- A. Handling the claims of unemployed workers;
- B. Deciding in each case whether the claimant is entitled to unemployment benefits; and
- C. Paying the benefits.

2303. General requirements for benefits.

2303.1. How do you qualify for unemployment insurance benefits?

There are several requirements for getting unemployment insurance benefits. You must:

- A. Register for work at a State employment service office and file a claim for benefits;
- B. Have worked before on a job covered by the State law. This includes most types of paid employment in industry and government, except certain agricultural and domestic employment;
- C. Have a certain amount of employment or earnings in covered employment during a specified “base period,” generally a year, before you claim;
- D. Be able to work. In general, unemployment insurance benefits are not payable to workers who are sick or unable to work for any other reason. However, a few States continue to pay the benefits within the legal limits to workers who became ill after they had established their claims. (In five States and Puerto Rico, workers contribute to special disability funds from which disability benefits are paid for non-work-connected sickness or accident.)
- E. Be available for work and must be ready and willing to take a suitable job if one is offered; and
- F. Not have:
 - 1. Quit your job voluntarily without good cause; (In some States the law says “without good cause attributable to the employer” or “connected with the work.”)
 - 2. Been discharged for misconduct in connection with your work;
 - 3. Refused or failed, without good cause, to apply for or accept an offer of suitable work. “Suitable” work is generally decided by the State. However, under Federal law no worker may be denied benefits for refusing to accept a new job:
 - a. Under substandard labor conditions;

- b. Where a labor dispute is involved; or
 - c. Where you would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.
4. Become unemployed because of a stoppage of work as the result of a labor dispute, in which you are interested or participating, that occurred at the establishment where last employed.

2303.2. Can States disqualify you for other causes?

Many States can disqualify claimants for other causes. Disqualification in some States amounts to postponement of benefits for a few weeks. In other States, benefits are reduced as well as postponed. Except under limited conditions, your work credits cannot be canceled or your benefit rights taken away completely because of a disqualifying act.

2304. Amount of unemployment insurance benefits.

2304.1. What is the amount of the weekly unemployment payment?

The amount of the unemployment benefit payment you may receive while unemployed depends upon the State in which you live. Usually, the benefit is about half of your full-time weekly pay, within top and bottom limits.

2304.2. Do the States provide minimum and/or partial benefits?

Every state provides minimum limits on benefits. All States provide partial benefits for partial unemployment. In some States, an unemployed worker may be paid an allowance in addition to his or her own unemployment benefit.

2305. How long can you receive unemployment benefits?

The number of weeks you can be paid unemployment benefits ranges from one to 30 weeks. Although the average is 26 weeks, the particular number in your case depends upon the law in your State.

Some State laws provide for the payment of additional benefits for a limited time to workers who have exhausted their regular unemployment benefits during a period of high unemployment. Federal laws may also provide additional benefits for workers who exhaust their State benefits during periods of high unemployment.

2306. Filing claims for benefits.

2306.1. How do you file for unemployment benefits?

As an unemployed worker, you must file a claim for benefits at an office or in any other manner as directed by the State e.g., telephone or mail.

You may file claims in any State, regardless of where you were previously employed.

2306.2. After filing a claim, when do your benefit payments begin?

If you get a full-time job, you are not entitled to benefits. However, if you do not find a job within a certain “waiting period” after you file a claim, payments begin for the following week. The waiting period is usually one week, but it depends upon the State in which you live.

2306.3. Have you moved into a new State and/or have you worked in more than one State?

If you have moved into a new State and are out of a job, you must do the same thing you would do as if you had been working in that State all the time. You must file a claim and register for a job. You should explain about your work in other States.

State officials will take your claim and:

- A. Forward it to the other State in which you may be qualified; or
- B. Provide a telephone number for you to file directly with the other state.

Any benefits that you may be entitled to will be paid by check sent directly from the State that owes them. Wages that you earned in two or more States will be combined.

2307. Do you disagree with a decision made on your claim?

You have the right to appeal any determination on your unemployment benefit claim. If you believe that the decision made on your claim is wrong, file an appeal in the office where the claim was filed within five to 30 days after you are notified of the decision.

An employer may appeal if he or she does not agree with a determination on an employee's claim.

2308. Are Federal civilian employees and ex-service members eligible for unemployment benefits?

If you are an unemployed Federal civilian or an ex-service member, you may be entitled to benefits under the conditions of a State law for determining benefit eligibility. Costs of the benefits are paid from a Federal appropriation from general revenue.

The amount you may receive is the same as if Federal pay had been covered under the State law. For ex-service members, pay is determined from a schedule that includes cash values of various

allowances as well as base pay. File claims for these benefits with your State agency.

MEDICAL ASSISTANCE

2309. Medical assistance.

2309.1. What is “Medicaid”?

Medicaid is a vendor payment program that makes direct payments to service providers and/or managed care organizations (e.g., health maintenance organizations) on behalf of eligible individuals. The program is operated by States with Federal financial participation.

2309.2. Who is covered by Medicaid?

States must cover “categorically needy individuals.” Categorically needy individuals are those that must be covered, which usually includes:

- A. Low income families with children;
- B. Individuals receiving SSI;
- C. Pregnant women, infants, and children with incomes less than a specified percent of the Federal poverty level; and
- D. Qualified Medicare beneficiaries.

2309.3. Can States limit the number of SSI recipients who are categorically eligible for Medicaid?

States may limit the number of SSI recipients who are categorically eligible for Medicaid by applying more restrictive eligibility standards than those of the SSI program. However, these standards cannot be more restrictive than those programs that were effect before SSI began in 1972. Also, since SSI payments are not available in Puerto Rico, Guam, and the U.S. Virgin Islands, those who qualify for AFDC, as well as those who receive aid to the aged, blind, or disabled are eligible for Medicaid coverage.

2309.4. Can States choose how to define “categorically needy”?

States have options as to how they define categorically needy. Their definition may include individuals receiving only a State supplementation of SSI, although their income would prohibit any SSI payment. (See §2311.)

2309.5. Can States cover groups other than the categorically needy?

In addition to the categorically needy, a State may elect to cover other optional categorical groups, such as:

- A. The medically needy-aged, blind, or disabled individuals;
- B. Members of families with dependent children who have too much income and/or resources to be eligible for cash assistance but not enough for medical care;
- C. Aged and disabled persons with incomes less than 100 percent of the poverty level; and
- D. Institutionalized persons with incomes no greater than 300 percent of the SSI Federal benefit rate.

2309.6. What services are provided to categorically needy individuals?

Categorically needy individuals must be provided with the following services:

- A. Inpatient hospital services;
- B. Outpatient hospital services;
- C. Rural health clinic services;
- D. Laboratory and X-ray services;
- E. Nursing facility services;
- F. Home health care services for individuals age 21 or older;
- G. Family planning services and supplies;
- H. Early and periodic screening, diagnosis, and treatment for individuals under age 21;
- I. Certified midwife services and physician services;
- J. Certified pediatric and family nurse practitioner services; and
- K. Federally qualified ambulatory and health center services.

In addition, there are many other services a State may choose to provide such as prescription drugs. For the medically needy, States have considerably more discretion in the services they provide.

2309.7. Can States impose an enrollment fee for the categorically needy?

States may not impose an enrollment fee, premium, or similar charge on most categorically needy individuals. However, States may impose such a charge (related to the individual's income) on the medically needy and on categorically needy individuals enrolled in HMOs.

States may impose cost sharing in the form of nominal deductibles or co-payments on both the categorically needy and the medically needy. Such cost sharing may **not** be imposed on services for the following:

- A. Children;
- B. Pregnant women;

- C. Residents in nursing facilities and intermediate care facilities for the mentally retarded;
- D. Emergency services;
- E. Individuals receiving hospice care; and
- F. Family planning services.

States may further exclude co-payment charges for HMO services provided to medically needy individuals.

FOOD STAMPS

2310. Food stamps.

2310.1. What is the purpose of the food stamp program?

The food stamp program is designed to provide food stamps for people with low incomes (a limit exists on how much money and property members of a household can have) to help them purchase needed food.

2310.2. Who runs the food stamp program?

The food stamp program is administered by State public assistance offices. The U.S. Department of Agriculture, the agency that sponsors the food stamp program, pays 100 percent of the benefit cost of the program.

2310.3. How do you apply for food stamps?

Apply for food stamps with the local food stamp office. Look in the telephone directory under "State Government" for the nearest office. Within 30 days, a decision must be made on your application. If you need faster service, emergency procedures are available.

2310.4. Can Social Security offices take food stamp applications?

Social Security offices are authorized to take food stamp applications from people who are receiving or applying for SSI, provided the applicants live in a household where everyone else is either receiving or applying for SSI. (See §2108.)

Social Security offices also provide food stamp information and applications to Social Security applicants, beneficiaries, and other SSI applicants/recipients who are not eligible to apply for food stamps at Social Security offices. The local food stamp office will still determine eligibility and authorize the food stamps.

STATE SUPPLEMENTATION OF SSI PAYMENTS

2311. State supplementation of SSI payments.

2311.1. What are the types of State supplementary payments?

There are two types of State supplementary payments: mandatory and optional.

2311.2. When are State supplementary payments mandatory?

States must provide minimum supplementary payments for individuals converted to SSI from State assistance programs for the aged, blind, or disabled. This provision insures that monthly income will not be less than the amount received under the former State program.

You do not need to file an application for mandatory State supplementary payments. Payment is automatic and is either issued directly by the State or combined with your payment.>

2311.3. When are State supplementary payments optional?

States may provide optional supplementation to bring your combined SSI-State payment closer to the amount of the costs-of-living than the SSI payment alone.

A Social Security office can let you know whether your State participates in this program. File an application at a Social Security office. In some cases, you can file an application with local welfare offices. Payments may be issued either directly by the States or may be added to your SSI payment by mutual agreement of State and Federal agencies. (See §2181.)

ADMINISTRATION FOR CHILDREN AND FAMILIES

2312. What is the Administration for Children and Families programs?

The Administration for Children and Families was created within the Department of Health and Human Services (HHS) in April 1991. It houses many Federal programs that work to promote economic and social self-sufficiency for families, children, and individuals across America. These programs focus on improving the well-being of low-income families, neglected and abused children and youth, Native Americans, refugees, and individuals with developmental disabilities and with mental retardation.

2313. Temporary Assistance to Needy Families.

2313.1. What is the Temporary Assistance to Needy Families (TANF) program?

The Temporary Assistance to Needy Families (TANF) program was created August 22, 1996, by the Personal Responsibility and Work Opportunity Reconciliation Act (P.L. 104-193). It replaces the Aid to Families with Dependent Children program (AFDC), the Job Opportunities and Basic Skills Training program (JOBS), and the Emergency Assistance program (EA).

Work and responsibility are the cornerstones of the TANF program. The law reflects this important goal in several ways:

- A. With few exceptions, the new law requires all adults receiving assistance to work or participate in work activities;
- B. States must meet certain work participation rate requirements; and
- C. Recipients who lose eligibility because of employment are entitled to a transitional period of Medicaid benefits.

2313.2. What are the purposes of the TANF program?

The four purposes of the TANF program are to:

- A. Provide assistance to needy families;
- B. End dependence of needy parents by promoting job preparation, work, and marriage;
- C. Prevent and reduce out-of-wedlock pregnancies; and
- D. Encourage the formation and maintenance of two-parent families.

2313.3. How can TANF funds be used?

As a general rule, States (or local governments and other agencies where decision-making has devolved from the State agency) must use the available funds for eligible needy families with a child. Under the new law, States and Tribes have great flexibility to determine the range of benefits and services that they will provide. TANF gives them the opportunity to design programs that meet the specific needs of the recipients within their jurisdiction. It also allows them to develop their own strategies for achieving program goals, including how to help recipients move into the work force.

Note: TANF funds may not be used to provide assistance to any family for more than 60 months. A State may choose a shorter time limit.

2314. Child Care and Development Fund.

2314.1. What is the Child Care and Development Fund (CCDF)?

The Child Care and Development Fund (CCDF) program is authorized by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.

Its purpose is to assist low-income families and those transitioning off welfare to obtain child care so that parents can work or attend training or education. The recipients of these funds are States, Territories, and Tribes.

Features of the program include:

- A. Parents may select any legally operating child care provider;
- B. Child care providers serving children funded by CCDF must meet the basic health and safety requirements set by grantees;
- C. A minimum of four percent of CCDF funds must be used by grantees to improve the quality of child care and to offer additional services to parents, such as resource and referral programs. (In order to improve the health and safety of available child care, the grantees have provided training and technical assistance to their providers and have intensified their monitoring efforts to achieve this outcome.)
- D. Tribes may use a portion of their funds to construct child care facilities provided that there is no reduction in the current level of child care services.

2314.2. How is the program funded?

Under the Child Care and Development Fund, States are required to serve families through a single, integrated child care system. All child care funding is now combined under the Child Care and Development Block Grant (CCDBG) Act. The CCDBG regulations apply to the Child Care and Development Fund program.

2314.3. Can States subsidize the program?

States can provide subsidized child care to eligible parents who earn up to 85 percent of the State median income. The subsidy is through certificates or contracted programs.

2315. Child Support Enforcement.

2315.1. What is the Child Support Enforcement (CSE) program?

The Child Support Enforcement (CSE) Program was established in 1975 under Title IV-D of the Social Security Act. Its goal is to ensure

that children are financially supported by both of their parents. Designed as a joint Federal, State, and local partnership, the program involves all 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands, each with its own unique laws and procedures.

2315.2. What services are provided by the program?

The Child Support Enforcement Program provides four major services:

- A. Locating non-custodial parents;
- B. Establishing paternity;
- C. Establishing child support obligations; and
- D. Enforcing child support orders.

2315.3. Who runs the program?

State and local human services departments often with the help of prosecuting attorneys, other law enforcement agencies, and officials of family or domestic relations courts often run the program. Tribes will be eligible for direct funding of their own child support program upon publication of a final regulation.

2315.4. Who is eligible to participate in the program?

Child Support Enforcement services are available to:

- A. Families receiving assistance under the Temporary Assistance for Needy Families (TANF) or Tribal TANF programs. Any current child support collected reimburses the State or Tribe and Federal governments for TANF payments made to the family; and
- B. Families not receiving TANF, but apply for such services. Child support payments that are collected on behalf of non-TANF families are sent to the family. For these families, states must charge an application fee of up to \$25, but may pay this fee from state funds. Some states may also charge for the cost of services.

2315.5. Has the program been successful?

During FY 1997, \$13.4 billion in child support payments was collected. Paternity was established for nearly 1.3 million children that year through the CSE Program and voluntary in-hospital acknowledgements. The program has provided vital links between children and their non-custodial parents.

2315.6. What role does welfare reform play in contributing to the success of the program?

Welfare reform legislation provides strong measures for making sure children receive the support due them:

- A. States have uniform interstate laws;

- B. State and Federal CSE programs now provide registries of newly hired employees and case registries;
- C. Paternity establishment is being streamlined;
- D. Some States have computerized state-wide support collection and disbursement centers. More States will have these systems by October 1, 1999; and
- E. Tough new penalties, such as passport denial, license revocation, and seizure of assets, are available when child support obligations are not met.

The 1996 legislation also recognizes the importance to children of access to their non-custodial parent. The new law includes grants to help States establish programs that support and facilitate non-custodial parents' visitation with and access to their children.

2316. Head Start.

2316.1. What is the Head Start program?

Head Start is authorized under Title I of the Human Services Reauthorization Act of 1990. The program provides comprehensive developmental services to low-income, pre-school children and their families.

Head Start is based on the philosophy that a child benefits from a comprehensive, interdisciplinary program that fosters development and remedies problems through a broad range of services. Head Start involves the child's entire family and community.

2316.2. Who participates in the program?

Grants to conduct Head Start programs are awarded to local public, private, or nonprofit agencies. Grantees must match the total cost of the program at a rate of 20 percent. At least 10 percent of the enrollment opportunities in each program must be made available to children with disabilities.

2316.3. What is the Early Head Start program?

There is powerful research showing that the period from birth to age three is critical to healthy growth and development and to later success in school and in life. The 1994 Head Start Reauthorization Act established a new program, Early Head Start, for low-income pregnant women and families with infants and toddlers. Projects must coordinate with local Head Start programs to ensure continuity of services for children and families.

2317. Social Services Block Grant.

2317.1. What is the Social Services Block Grant (SSBG)?

The Social Services Block Grant (SSBG) is authorized by the Omnibus Budget Reconciliation Act of 1981. It provides Federal funds to the States, including the territories and insular areas, for social services directed at:

- A. Achieving economic self-support or self-sufficiency;
- B. Preventing or remedying neglect, abuse, or exploitation of children or adults;
- C. Preventing or reducing inappropriate institutionalization; and
- D. Securing referral for institutional care, where appropriate.

2317.2. What are the States responsible for?

States have responsibility for:

- A. Determining the services they will provide;
- B. How they will distribute services; and
- C. Eligibility requirements.

Each State's allocation from the total SSBG appropriation is based on its population. In the 1996 welfare reform legislation, States were given the authority to transfer up to 30 percent of their TANF funds to the Social Services Block Grant program.

2317.3. What services are provided by the program?

The most frequently provided services using the Social Services Block Grant are:

- A. Child day care;
- B. Home-based services that help individuals or families with household and personal care;
- C. Protective services that prevent or remedy abuse, neglect, or exploitation of children or adults;
- D. Special services for the physically, mentally, or emotionally disabled; and
- E. Social support.

2318. Foster Care and Adoption Assistance.

2318.1. What are the Foster Care and Adoption Assistance programs?

Foster Care and Adoption Assistance programs are authorized under Title IV-E (Federal Payments for Foster Care and Adoption Assistance) of the Social Security Act. They help States provide care for children who need placement outside their homes in a foster family home, or in

an institution. These programs also facilitate the placement of special needs children in permanent adoptive homes, preventing long, inappropriate stays in foster care. Special needs children include those who are older, members of minority or sibling groups, and/or physically, mentally, or emotionally handicapped individuals.

2318.2. How are the programs funded?

These programs are funded jointly by the Federal and State governments. Monthly payments to families and institutions for foster and adoptive children vary from State to State.

2319. What is the Low Income Home Energy Assistance Program?

Under the Low Income Home Energy Assistance Program (LIHEAP), the Federal Government provides grants to States, Territories, Indian Tribes, and tribal organizations that wish to assist low-income households in meeting the costs of home heating and cooling needs. Payments may be made directly to eligible households or to home energy suppliers who comply with legislative provisions. Grantees can also use LIHEAP funds to help low-income households deal with energy-related crises or pay for energy-related repairs to make their homes more energy efficient.

2320. What is the Child Welfare Services program?

Child Welfare Services help State public welfare agencies keep families together. Authorized under Title IV-B, Subpart 1 of the Social Security Act, Child Welfare Services are available to children and their families, regardless of income. State services include the following:

- A. Preventive intervention aimed at keeping children within the home;
- B. Services to develop alternative placements, such as foster care or adoption, if children cannot remain at home; and
- C. Reunification services so children can return home if possible.

2321. Family Preservation and Support Services.

2321.1. What are the Family Preservation and Support Services?

Family Preservation and Support Services are authorized by Title IV-B, Subpart 2, of the Social Security Act. They encourage and enable each State to develop or expand, and operate a program of family “preservation services” and community-based family “support services.” Grants are made to State agencies and Indian Tribes that qualify under the allotment formula.

2321.2. What are family “preservation services”?

Family “preservation services” assist families in crisis where a child is at imminent risk of being placed in out-of-home care because of abuse and/or neglect.

2321.3. What are family “support services”?

Family “support services” are primarily preventive activities aimed at increasing the ability of families to successfully nurture their children. The services are most often provided at the local level by community-based organizations.

2322. What are Refugee Assistance programs?

Refugee Assistance programs were established by the Immigration and Nationality Act in 1980. The programs help refugees, Cuban, and Haitian entrants become employed, economically self-sufficient, and assimilated into our society as soon as possible after their arrival in the U.S. Federal funds are provided to States to help offset necessary costs. A major emphasis is on increasing refugee employment and reducing welfare dependency.

2323. What is the Community Services Block Grant?

The Community Services Block Grant (CSBG) provides annual funding to States, Territories, Indian Tribes, and tribal organizations to decrease poverty in communities. The money is used to provide a wide range of services and activities to local communities through a network of public and private agencies. Approximately 950 Community Action Agencies and several hundred other community-based organizations participate in assisting low-income persons, including the elderly. CSBG funds are primarily used to meet employment, education, housing, income management, energy, health, and emergency needs of the poor.

2324. Family Violence Prevention and Services Act.

2324.1. What is the Family Violence Prevention and Services Act?

Through the Family Violence Prevention and Services Act, the Department makes grants to State agencies, territories, and Indian Tribes for victims of family violence and their dependents. State agencies distribute the family violence prevention and services funds through a “request for proposals” procedure at the local level. In addition, these grants provide support for related services in shelter programs such as alcohol and substance abuse prevention, family violence prevention counseling, and other prevention activities.

2324.2. How can you obtain additional information?

ACF funds the five national resource centers that provide information, technical assistance, and research findings via toll-free numbers:

- A. National Resource Center on Domestic Violence (800-537-2238);
- B. Battered Women's Justice Project (800-903-0111);
- C. Resource Center on Child Custody and Protection (800-527-3223);
- D. Health Resource Center on Domestic Violence (800-792-2873); and
- E. National Resource Center to End Violence Against Native Women (Sacred Circle) (877-733-7623).

A national toll-free Domestic Violence Hotline is available 24 hours every day to provide information and referral services, counseling and assistance to victims of domestic violence, their children and the general public (800-799-SAFE).

2325. Developmental Disabilities.

2325.1. What is the Developmental Disabilities program?

The Developmental Disabilities program is authorized by the Developmental Disabilities Assistance and Bill of Rights Act, as amended. Developmental Disabilities funds are awarded in support of programs that protect the rights and promote the self-sufficiency of individuals with developmental disabilities and their families. Such programs include:

- A. State Developmental Disabilities Councils;
- B. Protection and Advocacy Systems;
- C. University Affiliated Programs; and
- D. Projects of National Significance.

2325.2. What issues does the program address?

The programs work in partnership with individuals with developmental disabilities and their families, State governments, local communities, and the private sector to address such issues as: prevention, diagnosis, early intervention, therapy, education, training, employment, leisure opportunities, and community and institutional living.

2325.3. What impairments are considered developmental disabilities?

Developmental Disabilities are severe, chronic disabilities due to mental and/or physical impairment that manifest before age 22 and are likely to continue indefinitely. They result in substantial limitations in three or more areas:

- A. Self-care;

- B. Receptive and expressive language;
- C. Learning;
- D. Mobility;
- E. Self-direction;
- F. Capacity for independent living;
- G. Economic self-sufficiency; and
- H. Need for individually planned and coordinated services.

2326. Administration for Native Americans.

2326.1. What is the Administration for Native Americans (ANA)?

The Administration for Native Americans (ANA) is authorized under the Native American Programs Act of 1974, as amended. It promotes the goal of social and economic “self-sufficiency” of American Indians, Alaska Natives, Native Hawaiians, and other Native American Pacific Islanders, including Native Samoans.

2326.2. What is meant by “self-sufficiency”?

Self-sufficiency is that level of development at which a Native American community can control and internally generate resources to provide for the needs of its members and meet its own economic and social goals. Social and economic underdevelopment is the largest obstacle to the self-sufficiency of Native American communities and families.

2326.3. Who is served by ANA?

ANA is the only Federal agency serving all Native Americans, including:

- A. Over 500 Federally recognized Tribes;
- B. 60 Tribes that are State recognized or seeking Federal recognition;
- C. Indian organizations;
- D. Over 200 Alaska villages;
- E. Native Hawaiian communities; and
- F. Populations throughout the Pacific basin.

ANA provides grants, training, and technical assistance to eligible Tribes and Native American organizations representing 2.2 million individuals.

2326.4. What are the major goals of ANA?

Major goals of ANA are to:

- A. Assist tribal and village governments, Native American institutions, and local leadership to exercise control and decision making over their resources;
- B. Foster the development of stable, diversified local economies and economic activities that will provide jobs, promote economic well-being, and reduce dependency on public funds and social services; and
- C. Support local access to, control of, and coordination of services and programs that safeguard the health and well-being of people, essential to a thriving and self-sufficient community.

2326.5. How are ANA programs funded?

ANA promotes lasting self-sufficiency and enhances self-government largely through grants with social and economic development strategies (SEDS). These are competitive financial assistance grants in support of locally determined and designed projects to address community needs and goals. This approach of promoting self-sufficiency has moved the focus from dependency on services to increasing community and individual productivity through community development. These programs prove that Indian Tribes are fully sovereign nations, entitled by treaty and law to be dealt with on a direct, government-to-government basis. SEDS implements this policy of committing the Federal government to foster self-determination and self-governance for Native American peoples. It also promotes consultation and increased tribal authority in the administration of Federal funds.

2326.6. What is The Native American Languages grant program?

The Native American Languages Act was enacted (Public Law 102-524) to address the decline in the number of Native American languages that have survived over the past five hundred years. ANA's Native American Languages grant program promotes the survival and continuing vitality of Native American languages. The Commissioner of the ANA is the Chair of the Intra-Departmental Council on Native American Affairs (IDCNAA) and advises the Secretary on Native American issues. IDCNAA is the Departmental focal point for all initiatives affecting Native American people.

2327. Child Abuse and Neglect.

2327.1. What are the Child Abuse and Neglect programs?

Child Abuse and Neglect programs are authorized by the Child Abuse Prevention and Treatment Act (CAPTA), as amended. These programs provide grants to States to:

- A. Improve their systems for investigating and handling cases of child abuse and neglect;
- B. Support child abuse prevention and family resources and support programs;
- C. Fund research and demonstration activities; and
- D. Facilitate the spread of information.

2327.2. How can you get more information on the programs?

For more information on the issue of child abuse and neglect and programs, contact the National Clearinghouse on Child Abuse and Neglect Information at 1-800-FYI-3366.

2328. Runaway and Homeless Youth programs.

2328.1. What are the Runaway and Homeless Youth programs?

The Runaway and Homeless Youth programs are authorized by the Runaway and Homeless Youth Act, as amended. The programs provide grants to public and private non-profit State and local organizations for:

- A. Crisis intervention;
- B. Temporary shelter;
- C. Family reunification services for runaway youth;
- D. Transitional living services for homeless youth; and
- E. Outreach services to prevent the sexual abuse of runaway, homeless and street youth.

The program also funds the National Runaway Switchboard, a national communications system designed to help runaway youth and their families by linking them to crisis counseling, programs and resources, and each other, as appropriate.

2328.2. How can you get more information on the programs?

Call the National Runaway Switchboard for additional information at 1-800-621-4000.

2329. What is the Repatriation program?

The Repatriation program assists U.S. citizens and dependents returned to the U.S. by the State Department. If an American citizen in a foreign country becomes ill, is without funds, or needs to be returned to the U.S. because of a threatening situation in a foreign country, necessary services and loans are provided through this program.

2330. What is the President's Committee on Mental Retardation?

Established in 1966, The President's Committee on Mental Retardation (PCMR) advises the President and Secretary of DHHS on critical matters regarding programs and services for persons with mental retardation. This Committee also:

- A. Coordinates Federal agency activities in mental retardation;
- B. Conducts studies of existing programs;
- C. Highlights the needs for changes, where appropriate; and
- D. Promotes research.

In 1995, the PCMR embarked on a five-year project to encourage State planning for life-long community involvement and participation by people with mental retardation.

MATERNAL AND CHILD HEALTH AND WELFARE

2331. What types of services are provided for children under the Social Security Act?

There are two types of services for children provided under the Social Security Act. These are:

- A. Maternal and child health services and services for children with special health care needs; and
- B. Child welfare services and services to families receiving TANS.

Through leadership consultation and grants of Federal funds, DHHS helps the States extend and improve their system of services for women of childbearing age, infants, children, adolescents and children with special health care needs and their families.

Grants are also made to institutions of higher learning and nonprofit organizations for:

- A. Research projects relating to maternal and child health services;
- B. Services for children with special health care needs; and
- C. Research and demonstration projects in the field of child welfare.

Training grants are also included in the two programs.

2332. Maternal and child health services and services for children with special health care needs.

2332.1. What is the Maternal and Child Health Services Block Grant?

Maternal and child health services and services for children with special health care needs are provided by each State under the

authority of Title V (Maternal and Child Health Services Block Grant) of the Social Security Act. The purpose of this program is to improve the health of all mothers and children consistent with health status goals and national health objectives established under the Public Health Service Act for the year 2000.

2332.2. How can States use the Block Grant funds?

States use the Block Grant funds made available to them for:

- A. Developing comprehensive Statewide systems of care for women of childbearing age, infants, children, adolescents, and children with special health care needs and their families;
- B. Providing and making sure mothers and children (in particular those with low income or with limited availability of health services) have access to quality maternal and child health services;
- C. Reducing infant mortality and the incidence of preventable diseases and handicapping conditions among children;
- D. Providing rehabilitation services for blind and disabled individuals under age 16 receiving SSI payments, to the extent medical assistance for such services is not provided under Medicaid; and
- E. Providing and promoting family-centered, community-based, coordinated care (including care coordination services) for children with special health care needs and to facilitate the development of community-based systems of services for such children and their families.

2332.3. Are there Federally administered project grants?

In addition to the State programs described above, funds are set aside for Federally administered project grants in the following areas:

- A. Special Projects of Regional and National Significance (SPRANS) program in the following categories:
 - 1. Training of health and health-related personnel in the areas of maternal and child health and services for children with special health care needs;
 - 2. Research designed to improve the delivery of services for mothers, children, and children with special health care needs;
 - 3. Genetic disease testing, counseling, and information development and dissemination, and newborn screening for genetic disorders;
 - 4. Hemophilia diagnosis and treatment; and
 - 5. Other special improvement projects that address expansion or improvement of health services, including early intervention,

for mothers, children, and children with special health care needs and Statewide systems development.

- B. Development and expansion under the Community Integrated Services Systems program of model service delivery strategies in the following six categories:
1. Maternal and infant home visiting activities in which, among other services, case management services are provided in the home;
 2. Activities designed to increase the participation of obstetricians and pediatricians under the Maternal and Child Health (MCH) Block Grant and Medicaid programs;
 3. Integrated maternal and child health service delivery (i.e., one-stop shopping) systems;
 4. MCH activities operated under the direction of a non-profit hospital;
 5. MCH activities targeted to serve rural populations; and
 6. Outpatient and community based services activities (including day care services) for children with special health care needs.

2332.4. How can you get more information?

For further information about health services for mothers and children under Title V, contact the Maternal and Child Health or Children with Special Health Care Needs staff in the Regional Offices of the Department of Health and Human Services. You can also contact the appropriate State or local health department or other State Agency administering these programs. You can get information about the project grants from:

**Maternal and Child Health Bureau, Health Resources and Services Administration 5600 Fishers Lane, Room 18-05
Rockville, Maryland 20857. Telephone number: (301) 443-2170.**

WORKERS' COMPENSATION

2333. Workers' compensation laws.

2333.1. What is the purpose of workers' compensation laws?

Workers' compensation laws make sure you have medical care and cash benefits if you are injured in connection with your job. The laws also ensure cash benefits in the event you are killed in connection with your job.

2333.2. Are employers required to carry workers' compensation?

In most States, these laws are mandatory for all employers covered by the law. In the few remaining States, an employer may elect not to come under the system. In such cases, the employer is not permitted to use the defenses against workers' claims that he or she would have had under common law, such as the negligence of the injured worker or fellow employees.

2333.3. How do employers cover the cost of workers' compensation?

Employers meet the cost of workers' compensation by insurance. Employers usually have two choices:

- A. To insure with a private insurance company; or
- B. To self-insure.

Some States have a third choice. In a few States, all employers are required to insure with the State.

2333.4. Are all jobs covered by a State worker's compensation law?

No State's law covers all jobs. Some cover only kinds of work that are considered dangerous. Some cover only employers who have more than a specified number of employees. Coverage also varies for agricultural workers and domestic workers.

The laws cover injury or death from accidents "arising out of and in the course of employment." All laws include some or all diseases attributable to the worker's occupation. Most exclude injuries due to the employee's intoxication, willful misconduct, or gross negligence.

2334. How is the workers' compensation payment determined?

Your worker's compensation payments are usually based on your wages at the time of the injury. This amount is typically 66 and two-thirds percent of your former wage. Practically all laws place top and bottom limits on the weekly amounts payable to a disabled worker or to survivors. Some also limit the number of weeks benefits must be paid and/or the total amount paid in a given case. Most provide for death benefits to a widow throughout her life unless she remarries and for benefits to surviving children until they reach a given age. Some State programs provide benefits for widowers.

2335. Is medical care provided under workers' compensation?

Medical care for injured employees is provided under all workers' compensation laws. A few States put limits on the length of time medical care is supplied, the total cost, or both. Practically all laws provide benefits to help meet the burial expenses of workers who are killed on the job.

RAILROAD RETIREMENT

2336. Railroad Retirement and Railroad Unemployment Insurance Acts.

2336.1. What protections are provided under the Railroad Retirement and Railroad Unemployment Insurance Acts?

The Railroad Retirement Act and the Railroad Unemployment Insurance Act provide protection for persons who work for railroads and certain companies closely connected with the railroad industry. Both programs are administered by the Railroad Retirement Board.

Railroad employers and employees are taxed to finance retirement and survivor annuities and Medicare. Unemployment tax and other special program taxes are paid only by employers.

2336.2. How can you get additional information regarding eligibility?

Refer to the Railroad Retirement Board for specific information on eligibility. Offices are located in major cities and representatives regularly visit many other locations. Telephone directories or local post offices are sources of information for addresses and schedules of visits. Pamphlets are available from the Railroad Retirement Board offices or by writing to:

Office of Public Affairs, U.S. Railroad Retirement Board, 844 North Rush Street Chicago, Illinois 60611-2092.

2337. Retirement and disability annuities for railroad workers and families.

2337.1. When are railroad annuities payable?

Railroad Annuities are payable when you retire, become disabled, or die.

2337.2. When can you receive a railroad retirement annuity?

You may receive a retirement annuity as early as age 60. Your length of service determines points of eligibility.

2337.3. When can you receive a railroad disability annuity?

You may receive a disability annuity if you:

- A. Have at least 10 years of railroad employment;
- B. Are totally disabled; or
- C. Have at least 20 years of service and become partially disabled (unable to perform their regular jobs).

2337.4. Who else can receive a railroad annuity?

Annuities are also payable to your:

- A. Spouse or divorced spouse if you are retired;
- B. Widow(er) and surviving divorced spouse;
- C. Remarried widow(er)s;
- D. Children; and
- E. Parents upon your death.

A lump-sum may be payable because your death if there are no survivors immediately eligible to receive a monthly annuity upon your death.

As with Social Security, work after entitlement to any type of annuity affects eligibility to receive monthly payments.

2337.5. Are railroad annuities subject to Federal income tax?

Railroad annuities are subject to Federal income tax in the following way:

- A. The Social Security equivalent portion of tier I benefit (These benefits are taxed the same way as Social Security benefits;
- B. Tier II and the non-Social Security equivalent portion of tier I benefits are taxable in the same way as contributory private and public service pensions; and
- C. Vested dual benefits and the supplemental annuity are taxable in the same way as non-contributory private and public service pensions.

2337.6. What will you receive as a beneficiary showing the benefits you received for the tax year?

By late January, the Railroad Retirement Board will send you:

- A. A Form RRB-1099 showing the amount of equivalent tier I benefits; and
- B. A Form RRB-1099-R covering the benefits in (B) and (C) above.

2338. What benefits are provided under the Railroad Unemployment Insurance Act?

The Railroad Unemployment Insurance Act provides benefits to a qualified worker whom has been out of a job because of unemployment or illness. There are qualifications as to length of service, length of employment, past earnings, availability for work, incapacity, and registration or application. The duration of payments and the total amounts payable are limited. The Railroad Retirement Board makes determinations and initiates payments.

2339. Dual entitlement to railroad and Social Security payments.

2339.1. Can you qualify for both a railroad annuity and a Social Security benefit?

You may qualify for both a railroad retirement annuity and a Social Security Benefit. If you are entitled to both, you receive a combined payment. The Social Security Administration issues a certificate of award to you showing your Social Security benefit amount and advising that your final combined payment action will be taken by the Railroad Retirement Board. The Railroad Retirement Board computes and adjusts the railroad annuity and makes the combined payment. There is no difference in how your Social Security benefit is figured, but there are differences for the railroad annuity.

2339.2. Who handles survivor benefits if you are qualified for both a railroad annuity and a Social Security benefit?

Survivors benefits have always been handled by one agency or the other. The decision as to which agency will handle a claim is made by the Railroad Retirement Board. If you do not have enough railroad service to qualify for a railroad annuity, your credits are transferred to SSA, and the benefit is based on the employment under both systems.

VETERAN'S BENEFITS

2340. Are veterans of the U.S. Armed Forces entitled to benefits?

As a veteran of service in the U.S. Armed Forces, you are provided more than 40 different benefits and services by the Federal Government if you were:

- A. Honorably discharged; or
- B. Discharged under conditions other than dishonorable.

Benefits are also paid to your survivors and, in some circumstances, to the families of living veterans.

2341. What are some benefits administered by the Department of Veterans Affairs?

Many services and benefits are administered by the Department of Veterans Affairs (VA). **Some** of the benefits administered by the VA are:

- A. Compensation for service-connected disability;
- B. Pension for non-service-connected disabilities for veterans of the World Wars, the Korean conflict, the Vietnam era, and the Persian Gulf War (there is a special service pension for Spanish-American War veterans);
- C. Compensation to survivors of service members who died in service or from a service-connected cause;
- D. Pensions for survivors of veterans who served during the Spanish-American War, the World Wars, the Korean conflict, the Vietnam era, or the Persian Gulf War and died from a non-service-connected cause;
- E. Educational assistance;
- F. U.S. Government and National Service Life Insurance including protection against disability, Veterans Special Life Insurance and, under commercial programs supervised by VA, Servicemen's Group Life Insurance, Veterans Group Life Insurance, and Veterans Mortgage Life Insurance (Not all kinds of insurance have been available to all veterans. The period during which the individual was in service determines the availability of insurance programs.);
- G. A headstone or marker for the grave, an American flag to drape the casket, payment toward the veteran's burial expenses, and burial space in a national cemetery;
- H. Medical service, such as hospitalization, nursing home care, examinations, outpatient medical and dental treatment, and prosthetic devices;
- I. Domiciliary care; and
- J. Loans for homes, condominiums, and manufactured homes.

An individual's financial status may limit available services and benefits for those whose basis of eligibility is not a service-connected disability.

2342. Veterans Affairs survivors benefits affected by the Social Security Act.

2342.1. What survivors benefits administered by Veterans Affairs are affected by the Social Security Act?

Two types of survivors monthly benefits administered by VA are affected by the Social Security Act. These special payments are made by VA to a widow, widower, divorced spouse, parent, or child of the deceased veteran if all of the following conditions are met:

- A. The veteran died after 1956:
 - 1. While in the service; or
 - 2. As a result of service performed after September 15, 1940;
- B. The veteran was not insured under the Social Security Act;
- C. Survivors could be entitled to monthly Social Security benefits if the veteran had been insured under the Social Security Act; and
- D. The survivor is not disqualified from receiving Social Security benefits because the Railroad Retirement Board has jurisdiction of the survivors claim.

The term "service" means active duty, active duty for training, or inactive duty training.

2342.2. Are there any other payments provided to survivors?

Recent amendments provide for another special payment made by VA to certain survivors who meet the following conditions:

- A. The veteran died:
 - 1. Before August 13, 1981, while on active duty;
 - 2. After discharge as a result of a disability incurred in or aggravated by military service before August 13, 1981;
- B. The survivor meets the conditions of entitlement for mother's, father's, or student insurance benefits as they existed before August 13, 1981; and
- C. The survivor is not entitled to mother's, father's, or student insurance benefits or, in the case of a student, is entitled to a reduced benefit.

2343. What Veterans benefits are administered by agencies other than Veterans Affairs?

The Veterans benefits administered by agencies other than VA include:

- A. **Retired pay for disability incurred in active service and retired pay for age and longevity of service**-Administered by the service departments (Army, Navy, etc.);
- B. **Social Security wage credits for service during World War II and post-World War II periods**-Administered by SSA. Services in the Armed Forces performed after 1956 are subject to a combined contributory/gratuitous coverage system. Active duty basic pay is covered in the same way as the wages of civilian employees.
In addition, members of the armed services are entitled to receive an extra wage credit of up to \$1,200 per year, depending on the amount of basic pay accrued. Enlistees are only eligible for the additional credits if they serve out at least 24 months of their initial enlistment;
- C. **Farm Loan Benefits**-Administered by the Farmers Home Administration of the Department of Agriculture;
- D. **Assistance in obtaining home loans and preference in housing purchase or rental**-Administered by the Department of Housing and Urban Development; and
- E. **Re-employment rights, preference in job-finding assistance, unemployment compensation, Federal civil service preference** - Administered by U.S. Department of Labor, State employment offices, and the Office of Personnel Management.

2344. What Veterans Affairs publications are available?

A summary of the Federal benefits available to Veterans and their dependents has been published in a pamphlet, *Federal Benefits for Veterans and Dependents*, VA Pamphlet 80-92-1.

You can get this pamphlet from:

The Superintendent of Documents U.S. Government Printing Office
Washington, D.C. 20402

GOVERNMENT EMPLOYEES INSURANCE SYSTEMS

2345. Do Federal, State, and local governments have retirement systems?

The Federal government, States, and many localities have retirement systems that cover some or all of their employees. Most of these systems make payments to qualified employees who are disabled or retired because of old age. Some also provide annuities for survivors.

2346. Coverage of civilian employees of the Federal Government.

2346.1. What insurance systems cover civilians working for the Federal government?

Most civilians who work for the Federal Government are covered under the:

- A. Civil Service Retirement (CSRS) or the Federal Employees Retirement (FERS);
- B. Federal Employees Health Benefits (FEHB) Program;
- C. Federal Employees' Group Life Insurance (FEGLI) Act;
- D. Thrift Savings Plan (TSP); or
- E. Social Security Act, for Federal employees hired after January 1, 1984 (See §940).

For retirement purposes, other Federal laws cover certain special groups, such as foreign service officers. Federal employment not covered under other retirement systems is generally included under the Social Security Act.

2346.2. What is covered under CSRS and FERS?

The Civil Service Retirement (CSRS) and the Federal Employees Retirement System (FERS) provide annuities to qualified employees who retire because of age and years of service, involuntary separation not for cause, or disability.

2346.3. How do you qualify for a CSRS or FERS annuity?

Generally, a minimum of five years civilian service is required to be eligible for annuity benefits. However, a FERS employee may qualify for a disability annuity after 18 months of creditable civilian service.

2346.4. How is the annuity amount determined?

The retirement program is financed in part by employee contributions. The amount of an employee's annuity depends on several factors:

- A. The employee's "high three" average salary;
- B. Length of service;
- C. Age at retirement, whether or not the employee chooses to provide a survivor annuity; and
- D. Money that may be owed for service.

2346.5. Do CSRS and FERS pay survivor annuities?

CSRS and FERS pay survivor annuities to spouses or former spouses (if provided for by a valid court order), and minor children of employees who die while still employed.

2346.6. How does a survivor qualify for benefits under CSRS?

Before survivor benefits are payable to a child, spouse, and/or ex-spouse under CSRS, an employee:

- A. Must have died while subject to CSRS deductions; and
- B. Must have completed at least 18 months of civilian service prior to his or her death.

2346.7. How does a survivor qualify for benefits under FERS?

Before survivor benefits are payable under FERS, an employee:

- A. Must have died while subject to FERS deductions; and
- B. Must have completed at least 10 years of creditable service prior to his or her death.

Note: If a FERS employee dies in service with less than 10 years, but at least 18 months of creditable civilian service prior to his or her death, a survivor annuity may be payable to an eligible child. If a FERS employee dies in service with less than 10 years, but at least 18 months of creditable civilian service, a FERS basic death payment is payable to the surviving spouse or former spouse.

2346.8. What does the FERS death benefit consist of?

The FERS death benefit consists of:

- A. A lump-sum payment; (Effective December 1, 2000, this figure is \$23,386.98. This figure is increased annually by the amount of CSRS COLA.); and
- B. An amount equal to the higher of:
 - 1. One-half of the employee's annual salary at date of death; or
 - 2. One-half of the employee's high three average salary.

This basic death benefit can be paid to the surviving spouse or former spouse either in a single lump-sum settlement or in equal installments over 36 months. After the basic benefit has been paid, the surviving spouse receives no further money.

Note: If the FERS employee had at least ten years of creditable service and died in service, the surviving spouse or former spouse would collect the basic death benefit outlined above and a survivor annuity.

2346.9. Who is covered under the Thrift Savings Plan?

If you are covered under the Federal Employees Retirement Act, you are also covered by the Thrift Savings Plan (TSP). If you are a FERS employee, you receive the Agency Automatic Contribution, equal to one

percent of your basic pay. This goes into your Thrift Savings Plan account whether you actively contribute or not. If you are a CSRS employee, you only have a TSP account if you contribute to it.

2346.10. What do you do if a TSP account exists when the worker dies?

When a TSP account exists at the time of an employee's death, you must submit a claim and furnish written proof of the Federal employee's death and your right, as a beneficiary or survivor, to payment. Provide the claim to the Federal employee's employing office. That office will supply the claim form and other assistance. The office will also forward the claim to:

The Thrift Savings Plan Service Office National Finance Center P.O. Box 61500 New Orleans, LA 70161-1500

2346.11. How can you get additional information on CSRS and FERS?

For additional information on CSRS and FERS, contact:

The Retirement and Insurance Group Office of Personnel Management Washington, D.C. 20415

2346.12. How can you get additional information on the TSP?

The Thrift Savings Plan is administered by:

The Federal Retirement Thrift Invest Board 1210 H. Street NW Washington, D.C. 20005

2347. Federal Employees' Group Life Insurance.

2347.1. What coverage is provided under Federal Employees' Group Life Insurance?

The Federal Employees' Group Life Insurance Act provides insurance benefits for deceased Federal employees who have not waived coverage under this Act. Generally, life insurance coverage stops 31 days after separation from Federal service (subject to a conversion privilege). However, insured employees may retain coverage if they:

- A. Retire with eligibility for an immediate annuity; and
- B. Have been insured under the life insurance program for the five years of service immediately before retiring or before the first opportunity to enroll.

2347.2. How do you obtain the benefit?

As a beneficiary or survivor, you must submit a claim and provide written proof of the Federal employee's death and your right to payment to the Federal employee's employing office. That office will

give you the claim form and any other assistance you need. The employing office will then forward the claim to:

The Office of Federal Employees' Group Life Insurance 200 Park Avenue New York, NY 10166-0188

2348. Federal employees health benefits.

2348.1. Do Federal employees receive health benefits?

The Federal Employees Health Benefits Act provides health benefits coverage to most Federal employees and members of their families. The Federal Employees Health Benefits Program, (FEHBP) under Public Law (P.L.) 98-615, Civil Service Retirement Spouse Equity Act of 1984, and Title II of P.L. 100-615 provides for the enrollment of certain former spouses of current, retired, or separated Federal employees in the FEHBP. Each of these laws requires that agencies provide FEHBP coverage for qualified enrollees; however, there is no Government contribution. The enrollee must pay the full cost of the premium (both the enrollee and the Government share) plus a two percent administration charge.

2348.2. When does coverage end?

Generally, your health benefits coverage stops 31 days after the last day of the pay period in which separation from Federal service occurs (subject to a conversion privilege). However, you may retain coverage if you:

- A. Retire with eligibility for an immediate annuity; and
- B. Have been enrolled under the health benefits program for the five years of service immediately before you retire or before your first chance to enroll.

2348.3. Can continued coverage be granted temporarily?

Title II of P.L. 100-654 provides for temporary continuation of coverage under the FEHBP for:

- A. Certain individuals who separate from Federal service;
- B. Children of Federal employees, annuitants, or separated employees already enrolled in FEHBP who lose their status as family members; and
- C. Certain former spouses of Federal employees or annuitants who would not otherwise be eligible for continued FEHBP coverage.

2348.4. How can you get additional information?

For more information on Federal employee health benefits, contact:

The Retirement and Insurance Service Office of Personnel Management Washington, DC 20415

2349. Retirement systems administered by State and local governments.

2349.1. Do States and local governments administer retirement systems?

Retirement systems administered by States or local governments cover about three-fourths of the people employed by these governments. Under practically all these systems, the employee contributes to the plan. Most of the systems provide for retirement because of disability as well as for age and for payments to survivors of workers who die while working for the State or local employer. Conditions for receiving benefits and amounts of benefits vary widely. Usually an employee must have had a considerable period of service to receive a substantial annuity.

The Social Security Act permits a State to enter into a voluntary agreement with the Federal Government to accept Federal Social Security coverage for any one or more “coverage groups” of employees of the State or its political subdivisions. Information on coverage of State and local employees is given in Chapter 10.

2349.2. What happens to your contributions if you leave a job after considerable service, but before retirement?

If you leave a job after considerable service but before retirement age, you may have the option of having your contributions returned. Otherwise, you can leave them in the plan so that they may count toward an annuity at retirement age.

2349.3. Do States and local governments offer survivor benefits?

Many systems, especially those for police officers and firefighters, provide monthly benefits to survivors, particularly aged widows. Generally, however, survivor benefits consist of either a refund of contributions or continuing payments to the survivors of an annuitant.

CHAPTER 24

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MEDICARE

2400. Introduction.

2400.1. What does Medicare consist of?

Medicare consists of hospital insurance (Part A) and medical insurance (Part B). Medicare is administered by the Health Care Financing Administration (HCFA).

2400.2. Where can you obtain additional information?

This Chapter covers general information about the Medicare program. You can get further information from the booklet *Medicare & You* and its supplement *Medicare Coverage of Kidney Dialysis and Kidney Transplant Services*, or by contacting a Social Security office.

MEDICARE HOSPITAL INSURANCE (PART A)

2401. Medicare Hospital Insurance (Part A) definition.

2401.1. What does Medicare Hospital Insurance (Part A) cover?

Medicare Hospital Insurance (Part A) covers certain hospital and related health care services.

2401.2. Who is qualified for hospital insurance?

You are automatically entitled to hospital insurance beginning the first day of the month you turn age 65 or the 25th month of your entitlement to disability benefits if:

- A. You are entitled to Social Security monthly benefits; or
- B. You are a qualified railroad retirement beneficiary.

2401.3. Are health services provided outside the U.S. covered?

Under limited circumstances, services provided in Canada, Mexico, or aboard ship in U.S. territorial waters, may be paid for by Medicare. Otherwise, services furnished outside the U.S. are not covered by Medicare.

2402. When are you eligible for hospital insurance?

You are eligible for hospital insurance if you are:

- A. Age 65 or older and:
 - 1. Eligible for monthly Social Security benefits under the Social Security Act; or
 - 2. A qualified railroad retirement beneficiary; or

3. Not eligible for monthly Social Security or railroad retirement benefits, but you meet the requirements of a special transitional provision; or
 4. Not eligible for monthly Social Security benefits or railroad retirement benefits, but you voluntarily enroll and pay a monthly premium; or
 5. Would be eligible for monthly Social Security benefits if your governmental employment was covered work under the Social Security Act; or
- B. Under age 65 and disabled and:
1. Entitled to or deemed entitled to Social Security disability benefits for more than 24 months;
 2. Would be entitled to Social Security benefits for more than 24 months because of a disability if your governmental employment was covered work under the Social Security Act;
 3. Under specified circumstances, entitled to railroad retirement benefits because of disability; or
 4. Lose your entitlement to disability benefits and hospital insurance only because you are engaging in substantial gainful employment but voluntarily elect to enroll and pay a monthly premium (referred to as Premium Hospital Insurance for the Working Disabled).
- C. Are any age and have end-stage renal disease treated by a kidney transplant or a regular course of dialysis, and meet the special insured status requirements.

Note: State Medicaid agencies must pay Part A (but not Part B) premiums on behalf of qualified disabled and working Medicare beneficiaries who are low-income individuals. Low-income is considered not more than 200 percent of the Federal poverty level, and resources below 200 percent of the Supplemental Security Income SSI limit.

A Medicare Card showing your name, Medicare claim number, gender, and date(s) of entitlement is issued to you if you are entitled to Medicare.

HOSPITAL INSURANCE BENEFITS

2403. Administration.

2403.1. Who administers hospital insurance plans?

HCFA enters into agreements with State agencies and with organizations called “fiscal intermediaries” to work with HCFA in

administering the hospital insurance plan. The State agencies survey institutions to determine if they meet the conditions for participation as a hospital, skilled nursing facility, home health agency, or hospice. They also assist institutions in meeting conditions for participation.

2403.2. What do the fiscal intermediaries do?

Private organizations called fiscal intermediaries:

- A. Pay the HCFA determined amount of hospital insurance benefits to hospitals, skilled nursing facilities, hospices, and home health agencies out of the Medicare Trust Fund;
- B. Assist hospitals, skilled nursing facilities, hospices, and home health agencies in establishing and maintaining necessary financial records;
- C. Communicate information about hospital insurance protection; and
- D. Audit records of hospitals, skilled nursing facilities, hospices, and home health agencies, as necessary, to insure proper payment.

2404. What health care services does hospital insurance cover?

Hospital insurance benefits may be paid for:

- A. Up to 90 days of inpatient hospital care during each benefit period, plus 60 lifetime reserve days that can be used any time during your lifetime. The reserve days cannot be renewed;

Note: Hospital insurance benefits may be paid for no more than 190 days of inpatient psychiatric hospital services in your lifetime.

- B. Up to 100 days of extended care services in a skilled nursing facility during each benefit period after discharge from a qualifying hospital stay;
- C. Home health services; and
- D. Assistance in paying for hospice care, if all three of the following conditions are met:
 - 1. A doctor certifies that you are terminally ill;
 - 2. You choose to receive care from a hospice instead of standard Medicare benefits for the terminal illness; and
 - 3. Care is provided by a Medicare-participating hospice program.

2405. Benefit period.

2405.1. What is a “benefit period”?

A “benefit period” is a period of time that measures your use of services under Part A.

2405.2. When does a benefit period begin?

A benefit period begins with the first day (not included in a previous benefit period):

- A. You receive inpatient services in a certified hospital that meets certain specific Medicare and Medicaid requirements. Nonparticipating hospitals may be paid under certain conditions; and
- B. You are entitled to hospital insurance protection.

2405.3. When does a benefit period end?

A benefit period ends:

- A. With the close of a period of 60 days in a row during which you were neither:
 - 1. An inpatient of **any** hospital; nor
 - 2. An inpatient of **any** skilled nursing facility from which you received a skilled level of care.It does not matter if the hospital or facility was participating or meeting the conditions for participation.
- B. When you remain in a skilled nursing facility but do not receive skilled care for 60 days in a row.

2406. Items and services included in inpatient hospital care.

2406.1. What items and services are included for inpatient hospital care?

Inpatient hospital care includes the following items and services ordinarily furnished by a hospital (see §2422 and §2423) for the reasonable and necessary care and treatment of an inpatient:

- A. Bed and board (Medicare does not pay for a private hospital room unless medically necessary);
- B. Nursing services and related services (except for private duty nursing);
- C. Blood transfusions (see §2410 for exclusion);
- D. Use of hospital facilities;
- E. Medical social services;
- F. Drugs, biologicals, supplies, medical appliances, and equipment;
- G. Other diagnostic or therapeutic items or services; and
- H. Medical services provided by an intern or a resident-in-training under certain approved teaching programs and by physicians who teach them.

2406.2. What are your rights relating to your inpatient care?

As a Medicare beneficiary, you have the following rights relating to your inpatient care in a hospital:

- A. The right to receive all of the hospital care that is necessary for the proper diagnosis and treatment of your illness or injury. Under Federal law, your discharge date must be determined only by your medical needs, not by the diagnosis related group (DRG) (see §2417) or Medicare payments;
- B. The right to be fully informed about decisions affecting your Medicare coverage and payment for your hospital stay and for any post-hospital services; and
- C. The right to request a review by a Peer Review Organization (PRO) of any written notice of non-coverage you receive from the hospital stating that Medicare will no longer pay for your hospital care. PROs are groups of doctors paid by the Federal Government to review medical necessity, appropriateness, and quality of hospital treatment furnished to Medicare patients.

2407. What are your charges for inpatient hospital care?

Payments for inpatient hospital services are subject to a deductible and coinsurance. During each benefit period, a hospital may charge you for:

- A. An inpatient hospital deductible;
- B. A coinsurance amount for the 61st through the 90th day of inpatient care;
- C. A larger coinsurance amount for each lifetime reserve day (the 91st through the 150th day) that is used;
- D. The first three pints of whole blood (see §2410), or equivalent amounts of packed red blood cells that are not replaced on at least a pint-for-pint basis by or on your behalf; and

Note: Blood paid for or replaced under Part B of Medicare during the calendar year does not have to be paid for or replaced under Part A.

- E. Items and services not covered by the hospital insurance plan.

2408. How much of the cost of inpatient hospital services are covered by hospital insurance?

The hospital insurance is not responsible for the cost of inpatient hospital services until they exceed the deductible. Either you or your supplemental insurers are charged for this amount.

The inpatient hospital deductible is imposed only once during each benefit period, even if you are hospitalized several times.

2409. Is psychiatric hospital care covered by hospital insurance?

Hospital insurance can help pay for your inpatient hospital services in a participating psychiatric hospital for no more than 190 days in your lifetime. Once you use the 190 days, hospital insurance does not pay for any additional inpatient hospital services in a psychiatric hospital.

2410. Does hospital insurance cover the cost of blood or packed red blood cells?

Hospital insurance does not cover the first three pints of whole blood (or equivalent quantities of packed red blood cells) provided to you during a benefit period. However, insurance may cover blood processing (administration, storage, etc.) beginning with the first pint or unit in a calendar year.

The blood deductible applies to the cost of whole blood and packed red blood cells. You have the option of replacing the first three pints or units of blood on a pint-for-pint or unit basis, or paying customary charges for the pints or units you do not replace. Both Medicare Part A and Part B have three-pint blood deductibles. However, to the extent the blood deductible is met under one part, it does not have to be met under the other part.

2411. What items and services are included in extended care services?

Extended care services provided by a skilled nursing facility (see §2413) include the following items and services:

- A. Skilled nursing facility bed and board;
- B. Nursing care provided by or under the supervision of a registered professional nurse (but not private-duty nursing);
- C. Physical, occupational, or speech therapy provided by the facility or by others under arrangements made by the facility;
- D. Medical social services;
- E. Drugs, biologicals, supplies, medical appliances, and equipment ordinarily furnished for use in the skilled nursing facility;
- F. Medical services provided by interns or residents-in-training and other diagnostic or therapeutic services provided by a hospital with which the skilled nursing facility has an agreement for the transfer of patients and the exchange of clinical records; and

G. Other services necessary to the health and care of patients that are generally provided by skilled nursing facilities.

2412. Entitlement to benefits for extended care services.

2412.1. Do hospital insurance pay for skilled nursing facility services?

For hospital insurance benefits to be paid for skilled nursing facility services:

A. You must have been a hospital inpatient for at least three days in a row;

Note: The day of admission, but not the day of discharge, is counted as an inpatient hospital day.

B. The condition for which you are receiving skilled nursing facility services must be a condition for which:

1. You received inpatient hospital services; or
2. You developed while in the skilled nursing facility for treatment of such a condition;

C. A physician must certify that you need, on a daily basis, skilled nursing services or skilled rehabilitation services that can only be provided on an inpatient basis in a skilled nursing facility;

D. You must be admitted to the skilled facility and be in need of daily skilled nursing services (see (C)) within 30 days after discharge from the hospital. However, the 30-day period may be extended when:

1. A covered level of skilled care would not be medically appropriate within 30 days of discharge from the hospital; and
2. It is medically predictable at the time of discharge that you will need covered care; and

E. Skilled nursing facility services that follow your qualifying hospital stay that ended on or after the first day of the month in which:

1. You turned age 65;
2. You were entitled to hospital insurance based on disability or end-stage renal disease.

2412.2. How long are you covered for a stay in a skilled nursing facility?

When you stay in a skilled nursing facility and are covered by Medicare, Part A helps pay for needed daily skilled nursing care or rehabilitation services, up to a maximum of 100 days in each benefit period.

If you leave the skilled nursing facility and you are readmitted within 30 days, you do not need a new three-day stay in the hospital for care to be covered. If some of your 100 days are left and you need skilled nursing or rehabilitation services on a daily basis for further treatment, Medicare will help pay.

2413. What are your charges for skilled nursing facility services?

Payments for skilled nursing facility services are subject to coinsurance and a blood deductible. In each benefit period, a skilled nursing facility may charge you for:

A. A daily coinsurance amount for the 21st through the 100th day of care;

B. The first three pints of whole blood (or equivalent quantities of packed red blood cells) furnished and not replaced; and

Note: You are not responsible to the extent that this deductible has already been met during the calendar year in connection with the payment of benefits under Part A or Part B.

C. Items and services not covered by hospital insurance.

2414. What items and services are included in home health care?

Home health items and services are provided by a home health agency to you as an eligible beneficiary in your place of residence. They include the following:

A. Part-time or intermittent nursing care by or under the supervision of a registered professional nurse; and

Note: Full-time nursing is not covered.

B. Physical therapy and special language pathology services;

C. Medical social services;

D. Occupational therapy if you receive nursing or therapy services;

E. Medical supplies (except drugs and biologicals);

F. Durable medical equipment;

G. Medical services of an intern or resident-in-training under an approved teaching program of a hospital with which the home health agency is affiliated or under common control;

H. Part-time or intermittent services of a home health aide who has successfully completed an approved training program, and/or competency evaluation program, to the extent permitted by regulations; and

- I. The full cost of medically necessary home health care and 80 percent of the approved cost for durable medical equipment supplied under the home health benefit.

2415. What is a “hospice”?

A “hospice” is a public agency or private organization that is primarily engaged in providing:

- A. Pain relief;
- B. Symptom management; and
- C. Supportive services to terminally ill people and their families.

2416. What items and services are included in hospice care?

Hospice care items and services are provided by a Medicare-approved hospice program or by others under arrangements made by the hospice program to you as an eligible beneficiary. They include the following items and services:

- A. Nursing care by or under the supervision of a registered professional nurse;
- B. Physical and occupational therapy and speech- language pathology;
- C. Medical social services under the direction of a physician;
- D. Services of a home health aide who has successfully completed an approved training and/or competency evaluation program;
- E. Medical supplies (including drugs and biologicals);
- F. Use of medical appliances;
- G. Physicians' services;
- H. Short-term inpatient care (including respite care);
- I. Counseling (including dietary counseling); and
- J. Volunteers.

2417. Basis of Medicare payments to hospitals.

2417.1. How are Medicare payments to hospitals determined?

In most cases, payments to hospitals are made on a predetermined rate. These predetermined rates are based on payment categories called “Diagnosis Related Groups,” or DRGs. In some cases, the Medicare payment is more than the hospitals' costs. In other cases, the payment is less than the hospitals' costs. In special cases, where costs for necessary care are unusually high or the length of stay is unusually long, the hospital receives additional payment.

2417.2. Does Medicare pay for medical education activities?

A hospital's expenses for direct medical education activities are expenses incurred for interns and residents in approved programs. These expenses are paid for with an additional Medicare payment to the hospital known as a "per resident amount."

2417.3. What types of hospitals do NOT receive payment on a predetermined rate basis?

All hospitals participating in Medicare are paid on a predetermined rate basis except:

- A. Psychiatric hospitals;
- B. Long-term care hospitals;
- C. Children's hospitals;
- D. Hospitals in the Federal Territories;
- E. Rehabilitation hospitals;
- F. Cancer hospitals; and
- G. A few other special cases.

Hospitals that are rural referral centers, sole community providers, or that have disproportionate number of low-income patients may be entitled to an adjustment.

2418. Basis of Medicare payments to skilled nursing facilities and home health agencies.

2418.1. How are Medicare payments to skilled nursing facilities and home health agencies determined?

Payments to skilled nursing facilities and home health agencies are based on the lesser of:

- A. The reasonable cost of such services; or
- B. The customary charges for such services to the patients.

2418.2. How are costs computed?

Reasonable costs are computed in a variety of ways. The objective of the method of computation used is to come as close to the actual cost (both direct and indirect) of services furnished to beneficiaries. Therefore, under any method of determining costs, the costs of services to individuals covered by Medicare are not borne by individuals not covered. The opposite is also true: the costs of services to individuals not covered are not borne by Medicare.

2418.3. What role does HHS play?

HCFA is an agency of HHS. The Secretary of Health and Human Services (HHS) is authorized to:

- A. Set limits on provider costs to be recognized as reasonable. Limits are based on the costs of covered services by various classes of providers;
- B. Adjust payments of hospital insurance and medical insurance benefits to any institution that has been overpaid by a fiscal intermediary or carrier and has not refunded the amount of the overpayment; and
- C. Recover overpayment from beneficiaries.

2419. How are Medicare payments to hospices determined?

Benefit payments to hospices are based on predetermined rates for:

- A. Routine home care;
- B. Continuous home care;
- C. Inpatient respite care; and
- D. General inpatient care.

2420. Does Medicare cover Christian Science sanatorium services?

Hospital insurance pays for inpatient hospital and skilled nursing facility services received in a participating Christian Science sanitarium if it is operated, or listed and certified by the First Church of Christ, Scientist, in Boston, Massachusetts.

2421. Payments to participating hospital, skilled nursing facility, or home health agency.

2421.1. What types of hospitals, skilled nursing facilities, or home health agencies are paid hospital insurance benefits?

Hospital insurance benefits are normally paid only to a participating hospital, skilled nursing facility, home health agency, or hospice. In other words, a hospital, skilled nursing facility, home health agency, or hospice must meet certain requirements.

2421.2. What should you do if you are preparing for your treatment in a hospital, skilled nursing facility, or home health agency?

When you are making arrangements for your treatment, find out whether the hospital, skilled nursing facility, home health agency, or

hospice participates in Medicare. You can obtain this information from your physician or other person making the arrangements, the Social Security office, the hospital, skilled nursing facility, home health agency, or hospice.

2422. Are payments made to nonparticipating hospitals?

Nonparticipating hospitals may be paid hospital insurance benefits for emergency services under certain limited circumstances.

2423. Notice to beneficiary.

2423.1. What notification do you receive when hospital insurance benefits are paid?

When hospital insurance benefits are paid, you are notified of:

- A. The total amount of the bill;
- B. The amount of benefits paid;
- C. The amount for which you are responsible; and
- D. Your right to have a review of the payment determination, if you are not satisfied with the determination. (See §2451.)

2423.2. What are you responsible for?

As the beneficiary, you are responsible for deductibles, coinsurance, and non-covered items and services, such as personal comfort items.

**MEDICARE SUPPLEMENTARY MEDICAL INSURANCE
(PART B)**

2424. Definition.

2424.1. What is “Medicare supplementary medical insurance”?

“Medicare supplementary medical insurance” (Part B) covers:

- A. Certain physicians' services (including surgery);
- B. Home health services;
- C. Clinical laboratory services;
- D. Durable medical equipment; and
- E. Some other items and services not covered under hospital insurance protection.

2424.2. How is medical insurance protection financed?

The medical insurance protection is financed through:

- A. Premiums paid by each person who enrolls (or by the State where the person is enrolled under a Federal-State agreement); and
- B. Funds appropriated from Federal general revenues.

2425. Are you eligible to enroll?

You are eligible to enroll in Part B of Medicare if you are:

- A. Entitled to premium-free hospital insurance or to Premium Hospital Insurance for the Working Disabled; or
- B. Age 65 or older, a resident of the U.S., and either:
 - 1. A citizen of the U.S.; or
 - 2. An alien lawfully admitted for permanent residence who has lived in the U.S. continuously during the five years immediately before the month you apply for enrollment.

2426. Enrollment procedure.

2426.1. How do you enroll?

If you are not eligible for premium-free hospital insurance, you must enroll by filing a written request with us during a specified enrollment period.

2426.2. Are you incapable of enrolling on your own?

If you are not able to enroll, you may be enrolled by another person qualified to act on your behalf.

2426.3. What happens if you are entitled to Social Security benefits before your initial enrollment period?

You become entitled to medical insurance in the same month that your premium-free hospital insurance is established if:

- A. You are entitled to Social Security benefits before your initial enrollment period (see §2428); or
- B. You became entitled to Social Security or premium-free hospital insurance benefits based on your application filed during the first three months of your initial enrollment period. (See §2433 for the effect of enrollments in the fourth through seventh months.)

This “deemed enrollment,” however, applies only if you are living in the U.S., Guam, the Virgin Islands, or the Northern Mariana Islands (excluding Puerto Rico) and you are first becoming entitled to hospital insurance. If you live in Puerto Rico or elsewhere outside the U.S., you must file a written request to enroll as stated in §2426.

2426.4. What happens if you become entitled to premium-free hospital insurance after your initial enrollment period?

If you become entitled to premium-free hospital insurance after your initial enrollment period ends, you are deemed to have enrolled for medical insurance during the next general enrollment period, (January

1 through March 31 of each year) (see §2430). Coverage begins the following July.

2426.5. Can you withdraw from the medical insurance program?

You may withdraw from the medical insurance program at any time. If you withdraw before your coverage starts, there is no premium liability. If you withdraw after your coverage starts, your coverage (and premium liability) continues until the last day of the month following the month you file the withdrawal request.

2427. Kinds of enrollment periods.

2427.1. How many medical insurance enrollment periods are there and what are they?

There are three enrollment periods: (1) the initial enrollment period; (2) the general enrollment period; and (3) the special enrollment period.

2427.2. When do you use the initial enrollment period?

The initial enrollment period (see §2428) is the first chance you have to enroll. It is a seven-month period tied to the month:

- A. You become eligible for hospital insurance; or
- B. You turn age 65 and have the required residence/citizen/alien status.

2427.3. When do you use the general enrollment period?

The general enrollment period is an annual period, from January 1 through March 31. You can enroll during this period if:

- A. You failed to enroll during your initial enrollment period; or
- B. Your enrollment has ended. Use the general enrollment period to re-enroll (see §2430).

2427.4. When do you use the special enrollment period?

Use the special enrollment period if you are at least age 65 or disabled, you do not have end-stage renal disease, and you meet one of the conditions below:

- A. You did not enroll during your initial enrollment period because you were covered under a group health plan based on your (or your spouse's) current employment status; or

Note: In the case of a disabled individual, he or she is covered under a group health plan based on his or her own current employment status or the current employment status of any family member.

B. You enrolled (or were deemed to be enrolled) in your initial enrollment period (and any subsequent special enrollment periods). You have been covered at all times under the group health plan based on your (or your spouse's) current employment status.

Note: In the case of a disabled individual, he or she has been covered under a group health plan based on his or her own current employment status or the current employment status of any family member.

2428. Initial enrollment period.

2428.1. When is the initial enrollment period?

The initial enrollment period is a period of seven full calendar months. The beginning and end of your initial enrollment period is determined by the month that you are first eligible to enroll. Your initial enrollment period begins on the first day of the third month before the month you first become eligible to enroll. It ends with the close of the last day of the third month following the month you first become eligible to enroll.

Mr. Billings will turn age 65 in June. His initial enrollment period begins on March 1 and runs through September 30.

2428.2. For eligibility purposes, when are you considered to have turned a certain age?

You turn a certain age on the day before your birthday. Therefore, if person's 65th birthday is on the first day of a month, he or she turns 65 on the last day of the month before.

If Mr. Billings' 65th birthday will be on July 1, he will turn age 65 in June. His initial enrollment period will be March 1 through September 30.

2428.3. Are you entitled to hospital insurance?

Some beneficiaries are eligible to enroll in Part B because of their entitlement entitled to hospital insurance. If you are in this situation, you are considered to meet Part B eligibility requirements on the first day you would be entitled to hospital insurance protection upon filing an application. This is true regardless of whether you have actually filed.

2428.4. What happens if you do not enroll when you are first eligible?

There may be a percentage increase in your monthly premium amount because of late enrollment.

2429. Are there any exceptions to the initial enrollment period?

There is an exception to the initial enrollment period if you turned age 65, and you did not enroll on time because you were mistaken about your age. Provide the evidence of your erroneous age upon which you relied and we can use it to determine your initial enrollment period, coverage period, and premium rate.

2430. When is the general enrollment period?

The general enrollment period occurs each year from January 1 through March 31. Except as explained in §2431, if you do not enroll during your initial enrollment period or if you terminate enrollment, you may only enroll during a later general enrollment period (see §2436).

2431. When is the special enrollment period?

The special enrollment period is a period during which you may enroll if:

- A. You are covered under a group health plan based on your current employment; or
- B. During the eight-month period that begins the first full month after your employment or group health plan coverage ends, whichever occurs first.

2432. What is a transfer enrollment period?

A transfer enrollment period is for individuals in an HMO who do not have Part A, and then change HMOs. If you are enrolled in an HMO, you may enroll in premium hospital insurance during a transfer enrollment period. The transfer enrollment period begins with any month or any part of a month in which you enrolled in an HMO. It ends with the last day of the eighth consecutive month in which you are no longer enrolled in the HMO.

2433. Deemed entitlement to medical insurance.

2433.1. Who is automatically deemed entitled to medical insurance?

If you are entitled to premium-free hospital insurance for the first time, you are generally deemed to have enrolled for medical insurance, unless you specifically refuse coverage.

2433.2. What rules apply in determining when coverage begins?

The following rules apply in determining when medical insurance coverage begins if you are enrolled, or are deemed to have enrolled for,

medical insurance. If you enroll during different months of your initial enrollment period, your coverage date may vary. Your coverage will begin the first day of:

- A. The month you first become eligible, if you enroll during the three months before that month;
- B. The month following the month you enroll, if you enroll during the month you first become eligible;
- C. The second month following the month you enroll, if you enroll during the month after the month you first become eligible. In other words, your coverage period begins on the first day of the third month following the month you first become eligible; or
- D. The third month following the month you enroll, if you enroll in the second or third calendar month after you first become eligible. In other words, your coverage period begins on the first day of either the fifth or sixth month following the month you first become eligible.

2434. State assistance programs.

2434.1. Do you have low income?

If you have very low income and few assets, you may qualify for State assistance in paying health care costs. Medicaid has programs that pay some or all of Medicare's premiums. The programs may also pay Medicare deductibles and coinsurance for certain older, low-income, or disabled individuals entitled to Medicare Part A.

2434.2. How do you know if you have Part A?

If you are not sure whether you have Part A, look on your red, white, and blue Medicare card. It will show "Part A (Hospital Insurance)" on the lower left corner of the card. If you do not have Part A or do not know if you are entitled, check with your local Social Security office, or call 1-800-772-1213. The TTY/TDD number for the hearing and speech impaired is 1-800-325-0778.

2434.3. What are the resource limits to qualify for State assistance?

If you have Part A, and your bank accounts, stocks, bonds, or other resources do not exceed \$4,000 (or \$6,000 for a couple), you may qualify for assistance as a:

- A. Qualified Medicare Beneficiary (QMB) - pays Medicare premiums, deductibles, and coinsurance;
- B. Specified Low-Income Medicare Beneficiary (SLMB) - pays the Part B premium; or

C. Qualifying Individual (QI) - pays all or some of the Part B premium.

Some property, including the home you live in, one car, and burial plots, are usually not counted as resources.

2434.4. What are the income limits to qualify for State assistance?

The following table shows the 2000 monthly income limits for individuals and couples for each program. Slightly higher amounts are allowed in Alaska and Hawaii.

Income Limits for State Assistance

Monthly Income Limits for 2000		Program Name
Individual:	Couple:	
\$716	\$958	QMB. This program pays your Medicare premiums, deductibles, and coinsurance.
\$855	\$1,145	SLMB. This program pays your Part B premium.
\$960	\$1,286	QI-1. This program pays your Part B premium.
\$1,238	\$1,661	QI-2. This program pays for a small part of your monthly Part B premium.

2434.5. How do you apply for a State assistance program?

If you have Medicare Part A and you think you qualify for help under any of these programs, file an application for Medicaid at your State local medical assistance or social services office. Local offices are listed in the Blue Pages of telephone books. The State insurance counseling program can also help with questions about these programs. State insurance counseling offices are listed in the Medicare handbook. For more information about these programs, call 1-800-MEDICARE (1-800-633-4277). Someone there will help you find the telephone number in your State.

2435. When does coverage begin if you enroll during a general enrollment period?

If you enroll during a general enrollment period (January 1 through March 31), your coverage begins on July 1.

2436. When does coverage begin if you enroll during a special enrollment period?

If you enroll during a special enrollment period, your coverage begins:

- A. On the first day of the month of enrollment, or at your option, the first day:
 - 1. You enroll while still covered under the group health plan based on your current employment status; or
 - 2. During the first full month you are not covered under the group health plan based on your current employment status; or
- B. On the first day of the month following the month of enrollment, if you enroll during the seven remaining months of the special enrollment period.

2437. Beginning date for coverage period when enrollment under Federal-State agreement.

2437.1. When does coverage begin if you are covered under a Federal-State agreement?

If you are enrolled under a State buy-in agreement, your coverage begins with the first month in which you are:

- A. Eligible for Medicare; and
- B. A member of a coverage group specified in the State Buy-in Agreement.

Under a State Buy-in Agreement, you are enrolled (or your enrollment is ended) by the State regardless of your preferences. There are several categories of Medicaid eligibility groups and not all Medicaid eligibility groups are eligible for State Buy-in.

2437.2. Does your State include a non-cash Title XIX Medical Assistance Only (MAO)?

If your State includes non-cash Title XIX Medical Assistance Only (MAO) in its Buy-in Agreement, your coverage for MAO begins the first day of the second month after the month the State makes a decision that you are eligible for MAO.

2438. Termination of coverage period-general.

2438.1. When does your entitlement to medical insurance end?

Your entitlement to Part B ends:

- A. With the month of your death;
- B. At the end of the grace period provided for the payment of overdue premium; or
- C. If you are under age 65, the month your hospital insurance entitlement ends.

You may also voluntarily end coverage by filing a written request. Coverage ends the month after the month you file the request to end benefits.

2438.2. How long is the grace period for paying premiums?

Normally, the grace period for payment of premiums is the 90-day period following the month in which the initial bill is issued. The grace period may be extended for another 90 days if there was good cause for your failure to pay the overdue premiums within the initial 90-day period.

2438.3. Do you have end stage renal disease?

If you have end stage renal disease, your medical insurance ends:

- A. With the end of the 12th month following the month maintenance dialysis stops; or
- B. The end of the 36th month following the month you have a kidney transplant.

2439. Termination of coverage period of person enrolled under a Federal-State agreement.

2439.1. When does your entitlement to medical insurance end if you are enrolled under a State Buy-on Agreement?

Your buy-in coverage ends with whichever of the following occurs first:

- A. The last day of the month in which you are eligible for inclusion in the coverage group (subject to certain limitations on the retroactivity of the deletion from the buy-in rolls);
- B. The last day of the month in which:
 - 1. The State Buy-in Agreement is in effect (if the agreement is terminated); or

2. You are a member of a coverage group that is deleted from the State's Buy-in Agreement;
- C. If you are under age 65, the last day of the month you are entitled to hospital insurance benefits; or
- D. The last day of the month in which you die.

2439.2. Are you deemed to have enrolled in medical insurance?

If your coverage ends under (A) or (B) above, you are deemed to have enrolled in the medical insurance plan in the initial enrollment period described in §2428. Your coverage period continues until terminated unless:

- A. You fail to pay premiums;
- B. You notify SSA that you no longer wish to participate in the medical insurance plan; or
- C. You die.

2439.3. When does coverage end when you decide to terminate coverage?

Your coverage ends the month you notify SSA that you want your medical insurance benefits to end if:

- A. You file your notification in the last month of coverage under the State Buy-in Agreement; or
- B. You file your notification the six months following the last month of coverage under the State Buy-in Agreement.

If you delay more than six months, coverage ends with the end of the month after the month you notify SSA that you want to end your medical insurance coverage.

MEDICAL INSURANCE BENEFITS

2440. How is medical insurance (Part B) administered?

Part B carriers are private organizations that contract with Medicare to process claims and make Medicare payments for services by doctors and suppliers. Claims for durable medical equipment, oxygen, and some other supplies are handled by special carriers called Durable Medical Equipment Regional Carriers.

2441. Benefits paid.

2441.1. What benefits does medical insurance (Part B) pay for?

Part B helps pay for doctors services, outpatient hospital care, diagnostic tests, durable medical equipment, ambulance services, and

many other services and supplies not covered by Medicare Part A. Generally, Part B pays 80 percent of the Medicare approved amounts for:

- A. Doctor services (doctors of medicine or osteopathy) such as:
 - 1. Medical and surgical services, including anesthesia;
 - 2. Diagnostic tests and procedures that are part of treatment;
 - 3. Radiology and pathology services by doctors for in and out-patients at hospitals;
 - 4. Treatment of mental illness (payments are limited); and
 - 5. Other services such as X-rays and blood transfusions;
- B. Services of other practitioners. In some circumstances, Part B can pay for some of the services provided by:
 - 1. Chiropractors;
 - 2. Podiatrists;
 - 3. Dentists and optometrists;
 - 4. Special practitioners, such as certified registered nurse anesthetists, certified nurse midwives, clinical psychologists, clinical social workers, physician assistants, or nurse practitioners and clinical nurse specialists working with a physician;
- C. Outpatient hospital services, such as:
 - 1. Services in an emergency room or outpatient clinic, including same-day surgery;
 - 2. Laboratory tests billed by the hospital;
 - 3. Mental health care in partial hospitalization psychiatric programs, if a physician certifies that inpatient treatment would be required without it;
 - 4. X-rays and other radiology services billed by the hospitals;
 - 5. Medical supplies such as splints and casts; and
 - 6. Drugs and biologicals that cannot be self-administered;
- D. Other services and supplies including:
 - 1. Ambulatory surgical services;
 - 2. Home health services to those beneficiaries who do not have Part A;
 - 3. Outpatient physical and occupational therapy and speech pathology services;
 - 4. Comprehensive outpatient rehabilitation facility services;
 - 5. Partial hospitalization for mental health treatment;

6. Rural health clinic services;
 7. Federally qualified health center services;
 8. Laboratory services;
 9. Pap smear screening;
 10. Breast cancer screening;
 11. Kidney dialysis and transplants;
 12. Heart and liver transplants; and
 13. Ambulance transportation;
- E. Durable medical equipment, such as oxygen equipment and wheelchairs; and
- F. Drugs and biologicals (under limited circumstances).

2441.2. When are fee schedules the basis for payment?

Fee schedules are the basis for paying for physicians' services and for most medical and other health services furnished by non-physician parties that are **not** hospitals, skilled nursing facilities, or home health agencies.

2442. How is payment to a service provider determined?

The “reasonable charge” of items and services is the basis of payment for most medical and health services furnished by, or under arrangements made by, a participating hospital, skilled nursing facility, or home health agency. (See §2418 for a discussion of reasonable charge.)

2443. Medical insurance deductible.

2443.1. What is the medical insurance deductible?

The medical insurance deductible is the amount of medical insurance expenses (see §2441) that you must pay for each year before medical insurance benefits become payable.

2443.2. When does the deductible NOT apply?

The deductible does not apply to the following:

- A. Home health services;
- B. Pneumococcal and influenza virus vaccine and its administration;
- C. Clinical laboratory tests; and
- D. Certain services provided by Federally-qualified health centers.

2443.3. Are you responsible for the cost of blood?

In addition to your deductible amount, you are responsible for the cost of the first three pints of whole blood (or equivalent quantities of packed red blood cells) you receive in a calendar year. Reimbursement

for blood under the medical insurance program after you have received three pints or units in a calendar year are subject to the medical insurance cash deductible and the 20 percent coinsurance provision. However, you are not responsible to the extent that this deductible has already been met during the calendar year in connection with the payment of benefits under Part A or Part B.

2444. What percent of expenses are payable under the medical insurance plan?

Medical insurance covers expenses as follows:

- A. Eighty percent of the approved amount incurred (see §2441) in a calendar year, after the medical insurance deductible (see §2443) has been subtracted. You or your supplemental insurance policy is responsible for the remaining 20 percent; this is called the medical coinsurance amount. (See §2445.) This coinsurance does not apply to clinical diagnostic laboratory tests;
- B. Fifty percent of the approved amount for treatment of most mental health services while you are not a hospital inpatient;
- C. One hundred percent of the reasonable costs of home health services, except durable medical equipment for which Medicare pays 80 percent;
- D. One hundred percent of the reasonable cost or the approved payment amount for the pneumococcal and influenza virus vaccine and their administration; and
- E. One hundred percent of the approved fee for certain clinical diagnostic laboratory tests.

2445. Medical coinsurance amount.

2445.1. Do you have to pay more than 20 percent of the medical fee?

You may have to pay more than 20 percent of the total physician's or supplier's fee if:

- A. Part B does not pay any amount for a service; or
- B. The physician does not agree to accept the approved amount as payment in full.

2445.2. Has your physician/supplier accepted the approved amount?

Your physician/supplier may not charge you more than 20 percent of the approved amount if your physician or supplier:

- A. Accepts assignment (receives the medical insurance payment directly from Medicare); and

B. Accepts the approved amount as payment in full.

2445.3. What assignments must physicians/suppliers accept?

All providers, physicians, and suppliers must accept assignment on all clinical laboratory claims. Under participation programs, a physician or supplier agrees to accept assignment for all medical insurance claims.

2445.4. Are there any guidelines for nonparticipating physicians/suppliers?

Nonparticipating physicians or suppliers may accept assignments on a case-by-case basis. If these physicians do not accept assignment on a claim, they cannot charge more than 15 percent over the approved Medicare payment amount on unassigned claims.

2445.5. How do you know if a physician/supplier participates with Medicare?

Physicians and suppliers are given the opportunity to sign participation agreements each year. Participating physicians and suppliers agree in advance to accept Medicare assignment on all claims. They are listed in a directory and have emblems and certificates of participation.

2445.6. When are medical benefits payable?

The amount of medical benefits payable is related to expenses incurred in a calendar year. Therefore, the period of time governing these benefits is different from the period of time governing hospital benefits (the period of time for hospital benefits is related to your benefit period). However, you do not need to wait until the end of the year to receive benefits. They are payable as you incur expenses, submit claims, and meet your deductible.

2446. What responsibilities do the providers of Part B services have in claiming benefits?

Doctors, suppliers, and other providers of Part B services must, in most cases, submit Medicare claims for you. They have one year from the date of their service to send in the claim. (If you have other health insurance that should pay before Medicare, you can submit the claims yourself.) Notify your Medicare carrier if your doctor or supplier refuses to submit a Part B Medicare claim.

2447. Notice to beneficiary.

2447.1. What notification do you receive when hospital insurance benefits are paid?

When hospital insurance benefits are paid, you are notified of:

- A. The total amount of the bill;
- B. The approved payment amount;
- C. The amount of benefits paid;
- D. The amount for which you are responsible; and
- E. Your right to have a review of the payment determination, if you are not satisfied with the determination. (See §2452.)

2447.2. What are you responsible for?

As the beneficiary, you (or your supplemental insurance company) are responsible for deductibles, coinsurance, and on non-assigned claims, the difference between the approved amount and the legally permissible charge.

MEDICARE SECONDARY PAYER

2448. When is Medicare the secondary payer?

Medicare is the secondary payer (MSP) if you are entitled to veterans benefits, workers compensation, or black lung benefits. In general, Medicare is the secondary payer under the following circumstances:

- A. **Working Aged.** The working aged MSP provision makes Medicare secondary if you:
 - 1. Are age 65 or over; and
 - 2. Have group health plan coverage because of your (or your spouse's) current employment status.
 Medicare is secondary only if the employer that sponsors or contributes to the plan employs 20 or more employees.
- B. **Disability.** Medicare is secondary if you:
 - 1. Are under age 65;
 - 2. Have Medicare because of disability; and
 - 3. Are covered under a large group health plan (a group health plan of at least one employer that employs 100 or more employees) because of your (or a family member's) current employment status.
- C. **End Stage Renal Disease** (Permanent Kidney Failure). Medicare is the secondary payer to group health plan (GHP) coverage for the first 30-months of eligibility or entitlement to Medicare if you have Medicare because of end stage renal disease. This applies if you have your own coverage under a GHP, and if you are covered under a GHP as a dependent. This applies regardless of the number of employees and regardless of your employment status, i.e., whether or not you are currently employed.

D. No-fault Liability. Medicare is secondary payer for items and services covered under any no-fault or liability insurance. Liability insurance is insurance that provides payment based on legal liability for illness, injury, or damage to property. No-fault insurance means insurance that pays for medical expenses for injuries received:

1. On the property or premises of the insured; or
2. In the use, occupancy, or operation of an automobile, regardless of whom may have been responsible for causing the accident.

E. Worker's Compensation. Medicare does not pay for any services for which payment has been (or is expected to be) made under a workers' compensation law or plan of the United States or a State. Medicare may make a secondary payment for services covered under workers' compensation law or plan.

UNDERPAYMENTS AND OVERPAYMENTS

2449. What is an underpayment?

A Medicare underpayment is a payment due to a beneficiary under the health insurance program but not paid. It usually occurs upon the death of a beneficiary because a claim was not filed, or was filed and not paid, before death.

2450. What is an overpayment?

An overpayment under the Medicare program may be either:

- A. A payment in a higher amount than was due; or
- B. A payment made when none was due.

Relief from making repayment can be granted in certain cases as explained in §1914.

REVIEW AND HEARING PROCEDURES

2451. Hospital insurance claims.

2451.1. How are hospital insurance claims processed?

The health facility that provides the services submits the claim for payment to the intermediary. The Medicare intermediary or a peer review organization (PRO) then sends you a notice of the decision made on the claim.

2451.2. Do you disagree with decision made on the claim?

If you believe that the decision is not correct, you can ask for a reconsideration of the claim. Any Social Security office can help you request a reconsideration. If you are still not satisfied after the

reconsideration and if the amount in controversy is \$100 or more (\$200 or more if a PRO determination is made), you can ask for a hearing before an administrative law judge (ALJ). Cases involving \$1,000 or more (\$2,000 or more for a PRO matter), can, after a hearing and Appeals Council review, be appealed to a Federal court.

If you are enrolled in an HMO or CMP, you have the same rights to appeal that are available to other Medicare beneficiaries. Check with any Social Security office for information concerning these rights. Each organization is responsible for ensuring that you are informed in writing of the appeal procedures available to you.

2452. Medical insurance claims.

2452.1. How are medical insurance claims processed?

The physician or other supplier who furnished the service submits the claim for payment to the carrier. Medicare then sends you a notice of the decision made on the claim.

2452.2. Do you disagree with the decision made on the claim?

If you disagree with the decision, you can ask the Medicare carrier that handled the claim to review it. If you still disagree with the decision and if the amount in controversy is \$100 or more, you can request a hearing by the carrier. (To reach the \$100 amount, other claims that have been reviewed within the six months before the hearing request can be counted.)

If you are dissatisfied with the decision by the carrier hearing officer, and if the amount in controversy is \$500 or more, you can request a hearing before an ALJ. You can appeal cases involving \$1000 or more to a Federal court after an ALJ hearing and Appeals Council review.

2453. What information is provided in the notice from Medicare regarding a decision on a claim?

In addition to notifying you of the decision made on a claim, the notice from Medicare also tells you about your appeal rights. If you need more information, contact any Social Security office or the Medicare intermediary/carrier that made the decision.

2454. Advance directives.

2454.1. What is an “advance directive”?

Generally, an “advance directive” is a written document you prepare stating how you want medical decisions made if you lose the ability to make decisions for yourself. It contains written instructions that state your choices for health care or names someone to make those choices for you if you become unable to make decisions for yourself. The two

most commonly prepared advance directives are a “living will” and a “durable power of attorney.” Laws governing advance directives vary from State to State.

2454.2. What are your rights regarding advance directives?

You have the right to make your own medical treatment decisions. Federal law requires hospitals, skilled nursing facilities, hospices, home health agencies, and health maintenance organizations (HMOs) serving Medicare beneficiaries and/or Medicaid recipients to give you information about advance directives. They must also explain your legal choices in making decisions about medical care.

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